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IN THE

Supreme Court of the United States

OCTOBER, 1974 TERM

No. 74-1046

FREDERIKA BLANKNER,

Petitioner,

VS.

THE CITY OF CHICAGO,
a Municipal corporation; et al,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE

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OCTOBER, 1974 TERM

No.

FREDERIKA BLANKNER,

Petitioner,

vs.

THE CITY OF CHICAGO,
a Municipal corporation; et al,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit entered October 24, 1974.

OPINIONS BELOW

The Order and Opinion of the United States District Court for the Northern District of Illinois, Eastern Division, denying petitioner's request to convene a three-judge court is unreported and is printed in Appendix A hereto, *infra*, pp. App. 1-2. The Judgment and Opinion of the United States District Court for the Northern District of Illinois, Eastern Division, dismissing the complaint is unreported and is printed in Appendix B hereto, *infra*, pp. App. 3-19. The Judgment and Opinion of the Court of Appeals for the Seventh Circuit is reported at 504 F.2d 1027, and is printed in Appendix C hereto, *infra*, pp. App. 20-32.

JURISDICTION

The Judgment of the Court of Appeals was entered on October 24, 1974. Petitioner filed a timely petition for rehearing *en banc* and that petition was denied on November 21, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the usual rules of res judicata apply in this suit which seeks to vindicate a specially protected federal right under 42 U.S.C. §1983, when petitioner, who was a defendant in the prior state court proceedings and compelled

to litigate in the state forum, alleges that the prior state court proceedings did not afford a meaningful opportunity to be heard at a meaningful time.

2. Whether the court below denied petitioner due process by indiscriminately giving res judicata effect to a judgment entered against her in state court condemnation proceedings when petitioner alleges that those proceedings did not afford her an opportunity to be heard consistent with due process.

3. Whether the court below erred in holding that petitioner's sole avenue of challenging the Illinois urban renewal procedure was in the state courts even though petitioner presented substantial federal constitutional claims under 42 U.S.C. §1983.

4. Whether a finding made by a state court in condemnation proceedings that an area is "slum and blighted" bars by collateral estoppel petitioner's claim brought under Section 1983 that respondents used fraud in designating the area as slum and blighted and deliberately introduced false evidence in the state court proceedings to secure a judgment.

5. Whether the Illinois Urban Renewal Consolidation Act of 1961, which applies generally to all municipalities of the type described, but which, in effect, applies only to the City of Chicago, is a state statute within the meaning of 28 U.S.C. §2281, and whether a three-judge court should have been convened to review its constitutionality.

6. Whether a class action brought under Rule 23 of the Federal Rules of Civil Procedure is barred because the individual claim of the class representative may be barred by res judicata or collateral estoppel.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fourteenth Amendment to the Constitution of the United States, set forth in Appendix E, *infra*, App. 91. Rule 23, Federal Rules of Civil Procedure, set forth in Appendix E, *infra*, App. 91-2. Civil Rights Act of 1871, Section 1, 17 Stat. 13, 42 U.S.C. §1983, set forth in Appendix E, *infra*, App. 92. 62 Stat. 968, 28 U.S.C. 2281, set forth in Appendix E, *infra*, App. 93. Illinois Urban Renewal Consolidation Act of 1961, Ill. Rev. Stat., ch. 67½, Sec. 91.101 et seq., set forth in Appendix E, *infra*, App. 93-8.

STATEMENT OF THE CASE*

The Complaint (App. 33-90).

Petitioner, a 73 year old retired spinster teacher, owns a building on the South Side of Chicago in an area adjacent to the University of Chicago ("University") and now designated as the "60th Cottage Grove Slum and Blighted Area Redevelopment Project" ("Urban Renewal Area"). Part of the Urban Renewal Area where petitioner's building is located is also known as the University of Chicago's South Campus. Prior to 1960, 60% of South Campus was *already* owned by the University. Petitioner's building is still occupied by her and her tenants and the income derived from this property is her main source of income and support.

* Emphasis is ours unless otherwise indicated.

Prior to 1964, the University desired to acquire the balance of that portion of the Urban Renewal Area adjacent to its campus for expansion purposes.** The City of Chicago ("City") desired to obtain unrestricted urban renewal credits under Section 112 of the National Housing Act (42 U.S.C. Sect. 1643) which it could obtain by condemning and selling urban renewal property to the University. The University, its officers and officers and agencies of the City conspired to carry out these joint purposes and fraudulently deprive petitioner of her property.

In 1964, Chicago's Department of Urban Renewal and its officers ("DUR") conducted a study of the Urban Renewal Area and issued a *false* report which concluded that the area was "slum and blighted" within the meaning of the Illinois Urban Renewal Consolidation Act of 1961, Ill. Rev. Stat., ch. 67½, Sec. 91.102(i). On October 8, 1964, DUR, deliberately acting on this false report, adopted a resolution that the Urban Renewal Area was "slum and blighted" within the meaning of the Illinois Act and, recommended its acquisition. On November 16, 1964, Chicago City Council, relying on the false and fraudulent DUR report and resolution, passed an Ordinance adopting DUR's resolution and approving acquisition of the area for slum clearance and redevelopment under the provisions of the Illinois Act. Petitioner *did not* receive any notice that these determinations were being made, nor did the Illinois Act require that such notice be given.

On October 15, 1965, the City applied to the Housing Home Finance Agency (presently subsumed by the Depart-

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** The individual defendants sued and the offices which they held are set forth in detail in the complaint, App. 33-6.

ment of Housing and Urban Development) for funding under the National Housing Act. The application falsely designated petitioner's building and 16 townhouses on East 60th Place as substandard and falsely designated 16 buildings owned by the University as "structurally unsound to a degree requiring clearance," which buildings were in good condition and even today are still standing and being used by the University. These false characterizations and others were made in order to qualify the project for federal funding. Petitioner did not receive notice of this application nor did the Illinois Act require that such notice be given.

On November 11, 1966, Chicago's City Council adopted a Development Plan for the area which included the sale of a portion of the area to the University; just prior to the adoption of the plan, the University signed a certification agreement necessary for the City to obtain federal funding.

In 1967, the City began to acquire parcels within the Urban Renewal Area as authorized under the Illinois Act. As the City acquired parcels, buildings were torn down; others were vacated, fell into disrepair, and were vandalized. Property owners did not improve or maintain their property in the face of condemnation; no new construction was begun; financing in the area dried up; and the area quickly deteriorated.

Petitioner first learned of the Urban Renewal Project in October, 1967, when the City offered to purchase her property. After rejecting the offer, she was named as a defendant in State court condemnation proceedings. In those proceedings, she filed a traverse which challenged the right of the City to take her property.

At the 1968 condemnation proceedings, the City established its right to take simply by introducing certified copies of the fraudulent 1964 DUR Resolution and the 1964 City Ordinance. The *burden of proof then shifted* to petitioner to prove that the Urban Renewal Area—consisting of 105.6 acres, 266 structures, 2,592 dwelling units—was not slum and blighted as that term is defined in the Illinois Act. Petitioner argued that the City had not established a prima facie case. Petitioner presented no evidence about slum and blight in rebuttal and judgment was entered for the City. Petitioner was not then aware of respondents' conspiracy or the false nature of the DUR report or other documents.

Petitioner appealed to the Supreme Court of the State of Illinois which affirmed the judgment of the trial court without deciding the constitutional issues raised here. *Walker* v. *City of Chicago*, 50 Ill. 2d 69, 277 N.E. 2d 129 (1971), *cert.* denied, *Blankner* v. *City of Chicago*, 408 U.S. 931.

Count I of the complaint is brought under 42 U.S.C. §1983. It alleges that respondents conspired to take petitioner's property for other than a public purpose through the use of fraud in causing the urban renewal area to be declared "slum and blighted"; that they also deprived petitioner of due process by deliberately creating false and fraudulent reports and resolutions and introducing them into the condemnation proceedings to secure a judgment against petitioner. It further alleges that petitioner has been deprived of procedural due process in that she did not receive notice that the slum and blight determinations were being made in 1964 and that the condemnation trial in 1968 did not afford her a meaningful opportunity to challenge these determinations at a meaningful time.

Count II is brought as a class action under Rule 23, Federal Rules of Civil Procedure. It challenges the constitutionality of the Illinois Urban Renewal Consolidation Act of 1961 in that (i) it permits determinations of slum and blight to be made without affording property owners either notice of, or opportunity to challenge the determinations; (ii) it permits an impossible burden of proof to shift to property owners in condemnation proceedings; (iii) it does not afford an opportunity to challenge the taking until long after determinations of slum and blight have been made; and, in effect, have become a self-fulfilling prophecy; and, (iv) its definition of "slum and blight" is impermissibly vague and overbroad. Petitioner requested that a three judge court be convened to determine the issues in Count II.*

The District Court's Opinions (App. 1-17).

The District Court refused to convene a three judge court on the grounds that the challenged Illinois Act was not a state statute. It dismissed the complaint stating reasons of res judicata and collateral estoppel except as to the allegations that respondents deliberately introduced false evidence in the state condemnation proceedings, which allegations the court held did not state a claim under Section 1983.

The Opinion of the Seventh Circuit Court of Appeals (App. 20-32).

The court below in a 2-1 decision held that petitioner's Section 1983 claim (Count I), which alleges that respond-

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* The complaint was brought in four counts. Counts III and IV also challenged the constitutionality of the Illinois Act on grounds not relevant here.

ents conspired fraudulently to deprive her of her property without due process, was barred by collateral estoppel. The Court noted (App. 23):

> "The fraud allegations are not merely conclusory; plaintiff alleges facts which suggest she would have had a strong case had she attempted to prove it in the state condemnation proceeding."

The court held, however, that an essential element of petitioner's Section 1983 substantive due process claim was that the Urban Renewal Area was, in fact, not slum and blighted. The Court reasoned (App. 23):

> "If it were in fact slum and blighted, the defendants' motives in designating it for renewal would be irrelevant. *Green Street Assn.* v. *Daley*, 373 F.2d 1, 6 (7th Cir. 1967), certiorari denied, 387 U.S. 932. Similarly, the conclusions of the report relied on by the condemnation court could be true and the renewal project could proceed despite any fraudulent supporting statements. Plaintiff had an opportunity to litigate the slum and blight issue in the condemnation proceeding, but she deliberately bypassed it."

The Court held that the allegations that respondents, while conspiring under color of law, deliberately secured a judgment against petitioner through the use of false, manufactured evidence, did not state a claim under Section 1983. The Court stated (App. 24):

> "If that proceeding were infected by fraud, plaintiff may or may not have a remedy. It is clear, however, that any remedy lies not in federal court, but in a state court petition for relief from judgment under Ill. Rev. Stats. 1973, ch. 110, §72.
>
> "Plaintiff also argues that the fraud was only revealed by newly discovered evidence. That claim is also properly raised, if at all, in a state court petition under §72."

The Court also held that the procedural due process violations raised under Section 1983 were barred by collateral estoppel. The Court stated (App. 26):

> "We adhere to the rule in *Green Street* that cases like this presenting challenges to urban renewal programs are to be decided in the state court condemnation proceedings 'if the taking is ostensibly for a public purpose, even though violations of federally guaranteed rights are claimed.'"

Count II was dismissed on the grounds of res judicata as to respondents who were parties or privies to the condemnation proceedings and on the grounds of collateral estoppel as to the rest.

The court further held that Count II could not be maintained as a class action stating (App. 27):

> "Since the res judicata and collateral estoppel issues which have dominated this litigation are unique to Miss Blankner, she is not a proper class representative."

The court held that a three judge court would be improper on the grounds that the state statute challenged applied in effect only to the City of Chicago.

Luther M. Swygert, Chief Judge of the Seventh Circuit Court of Appeals, dissented. He argued that the opportunity to be heard afforded petitioner in the state court was "merely a mirage" (App. 31), that "she was not afforded a meaningful opportunity to contest the designation and taking" (App. 31), and that she has a "classic section 1983 cause of action" for deprivation of her property without due process of law. (App. 31) On Count II Judge Swygert further held that in his view a three-judge court should be convened to decide whether the judicial review provided by the Illinois Act violates the Due Process Clause.

REASONS FOR GRANTING THE WRIT

This case first involves whether petitioner's Section 1983 claim that she was denied due process by Illinois urban renewal procedures and a state court condemnation judgment infected with fraud may be barred by considerations of res judicata and collateral estoppel. Petitioner urges that a federal court should not be bound by the usual rules of res judicata and collateral estoppel when a plaintiff in a federal court suit who was a defendant in state court proceedings and compelled to litigate there, seeks to vindicate specially protected federal constitutional rights and alleges the prior proceedings themselves are constitutionally deficient. This question has been presented to numerous Circuit Courts of Appeals and conflicting decisions have resulted. The issue has serious state-federal implications which have not but should be decided by this Court. See *Florida State Board of Dentistry* v. *Mack*, 401 U.S. 960 (dissent from denial of petition for writ of certiorari); *Preiser* v. *Rodriquez*, 411 U.S. 475, 509, n. 14 (dissent).

Secondly, the decision of the court below, if allowed to stand, will effectively foreclose federal review of urban renewal procedures "even though violations of federally guaranteed rights are claimed" under Section 1983 (App. 26). In *Green Street Assn.* v. *Daley*, 373 F.2d 1 (7th Cir. 1967), *cert.* denied, 387 U.S. 932, and in *Harrison-Halsted Community Group, Inc.* v. *Housing and Home Finance Agency*, 310 F.2d 99 (7th Cir. 1962), *cert.* denied, 373 U.S. 914, the Seventh Circuit dismissed claims challenging the constitutionality of the Illinois urban renewal procedures which were brought prior to institution or completion of

state court condemnation proceedings. The decision of the court below, when read with *Green Street* and *Harrison-Halsted,* as the decision itself instructs, closes the doors of federal courts to Section 1983 challenges to urban renewal laws, which is contrary to decisions of this court.

Thirdly, the court below held that petitioner was barred from pursuing her Section 1983 claim that respondents committed fraud in the taking of her property. The decision explicitly condones the violation of civil rights to achieve an end which could have been achieved by lawful means.

Fourthly, underlying the above issues are serious constitutional questions of due process regarding the urban renewal procedures in Illinois. Although the public purpose and necessity for taking slum and blighted property under urban renewal has long been recognized, *Berman* v. *Parker,* 348 U.S. 26, the particular laws can give rise to constitutional abuse. The Illinois urban renewal procedure does not afford property owners notice or an opportunity to be heard at the time determinations of "slum and blight" are made. When the "hearing" opportunity is finally afforded—in this case four years later—the determinations are impossible to challenge because of the passage of time and because of the burden of proof which lies not with the condemning authority but with an isolated defendant who must prove that the area involved is *not* slum and blighted.

Fifthly, the decision below also dismisses the claims brought on behalf of a class under Rule 23, Federal Rules of Civil Procedure, for the sole reason that petitioner's individual claim is barred by res judicata. The decision directly conflicts with that of other Circuit Courts of Appeals and imposes by judicial fiat a new requirement under

Rule 23. The constitutional challenge to Illinois urban renewal laws is of extreme public importance in Illinois and across the country. That challenge should be reviewed thoroughly by the federal courts. At the very least, the class aspects of this action should be allowed to proceed.

Finally, in refusing to order the convening of a three-judge court to review the constitutionality of the Illinois Act, the court below has ignored the clear and unambiguous terms of 28 U.S.C. §2281. The decision expands the jurisdiction of a single federal judge to review the constitutionality of a state statute.

I.

THE COURT BELOW ERRED IN HOLDING THAT PRIOR STATE COURT CONDEMNATION PROCEEDINGS IN WHICH PETITIONER WAS DENIED A MEANINGFUL OPPORTUNITY TO BE HEARD AT A MEANINGFUL TIME BAR PETITIONER'S SUBSEQUENT SECTION 1983 CLAIM BY RES JUDICATA. ITS DECISION IS IN CLEAR CONFLICT WITH THAT OF THE COURTS OF APPEALS FOR THE SECOND AND FIFTH CIRCUITS.

The original determinations of slum and blight were made by respondents in 1964. Petitioner received no notice and was afforded no opportunity to be heard at the time of the 1964 determinations. Her first notice came in October, 1967. Her first "hearing" came at the condemnation trial in 1968. The intervening four years made the determinations a self-fulfilling prophecy. The City acquired and destroyed buildings; property owners did not improve or maintain their property in the face of imminent condemnation; financing was dried up; and vacant buildings were vandalized.

At the 1968 trial respondents introduced into evidence certified copies of the 1964 DUR Resolution and the 1964

City Council Ordinance. In that manner respondents established a prima facie case that the urban renewal area was slum and blighted. The burden of proof then shifted to petitioner. She, in effect, was told to prove that the area —consisting of 105.6 acres, 266 structures and 2592 dwelling units—was not slum and blighted.

The procedure followed was in accordance with the Illinois Urban Renewal Consolidation Act of 1961 and decisions interpreting that Act.

Finally, in the instant case, in addition to these procedural handicaps, petitioner later discovered and alleged in her complaint now before this Court that the procedure was infected with fraud. The slum and blight determinations were fraudulently made.

In dissenting below, Judge Swygert argued eloquently for petitioner's right to proceed and have the courts rule on the merits of her Section 1983 claim and on the constitutionality of the Illinois Urban Renewal Act. He stated in part (App. 30-31):

> ". . . In the instant case the public purpose for which the land was taken—elimination of a slum and blighted area—*could never be tested in the condemnation action as the Due Process Clause requires* since the adoption of the resolution and the ordinance foreclosed any later meaningful challenge.
>
> ". . . [She] could not have presented evidence of the condition of the area at the time it was determined to be slum and blighted since she alleged that the area had deteriorated by the time of the trial. Moreover, it would be unfair to place the burden on her to show the condition of two hundred sixty six buildings over four years prior to the notice from the City that the area had been designated as slum and blighted and was to be condemned under urban renewal. . . . The

> purported opportunity afforded [Miss] Blankner to litigate the propriety of the taking of her land in the state court was merely a mirage; the opportunity disappeared before she was ever required to respond in the condemnation proceeding. Since she was not afforded a meaningful opportunity to contest the designation and taking she has a right of action under 42 U.S.C. §1983 for deprivation of her property without due process of law.
>
> ". . . These allegations constitute a classic Section 1983 cause of action. In my judgment there was no way that her asserted claim could have been incorporated in the condemnation proceeding. . . ."

The majority below held petitioner was barred from maintaining her Section 1983 claim by reason of the prior state court condemnation proceedings. The court totally ignored the nature of those proceedings and *in fact never reached* the due process questions petitioner raised under Section 1983, holding that her claims were barred by res judicata and collateral estoppel.

The decision is directly in conflict with decisions of the Courts of Appeals of the Fifth and Second Circuits; and it openly ignores the underlying policies of Section 1983. In *Mack* v. *Florida State Board of Dentistry,* 430 F.2d 862, 864 (5th Cir. 1970), *cert.* denied 401 U.S. 960 (Justice White and the Chief Judge dissenting) a dentist's license to practice was revoked after notice and a hearing before a state administrative agency. The dentist appealed the revocation through the state courts without success and then filed a Section 1983 claim in federal court. The Court refused to apply collateral estoppel or res judicata. Judge Coleman stated regarding the administrative hearing:

> "To get down to brass tacks, this was not a hearing. It was an ungoverned confrontation. We hold that Dr.

> Mack, as a matter of fact, has not had a hearing in that sense required of anything which claims to be an administrative hearing as known to the jurisprudence of this Country."

Similarly, in *Lombard* v. *Board of Education of City of New York,* 502 F.2d 631, 635 (2d Cir. 1974), the plaintiff claimed he was denied procedural due process in violation of Section 1983 when he was discharged as a probationary teacher without notice and a hearing. The plaintiff had previously challenged his discharge in the state courts in an action *filed by him.* (Miss Blankner was a defendant in the state court). Judge Gurfein stated:

> "Whether it is called res judicata or claim preclusion, we think for several reasons that policy considerations should not permit the extension of the res judicata doctrine in this case to issues of procedural due process which are said to raise claims under 42 U.S.C. §1983."

The Court also noted that collateral estoppel or issue preclusion did not bar the Section 1983 claim particularly since procedural due process questions were raised regarding the prior proceedings.*

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* Several courts have noted that Section 1983 claims may deserve special treatment suggesting that normal rules of finality of state court judgments do not apply in actions brought under Section 1983. See *Florida State Board of Dentistry* v. *Mack,* 401 U.S. 960 (dissent from denial of petition for writ of certiorari); *Preiser* v. *Rodriquez,* 411 U.S. 475, 509, n. 14 (per Justice Brennan, dissent); *Jensen* v. *Olson,* 353 F.2d 825 (9th Cir. 1965) (considered constitutional claims on their merits after state court proceedings); *O'Connor* v. *O'Connor,* 315 F.2d 420, 422 (5th Cir. 1963) (dicta indicating that a federal court will intervene to review a determination of a state court if there has been a deprivation of a federal right. *Hardy* v. *Northwestern Federal Savings & Loan Association,* 254 F.2d 70 (D.C. 1957) (dictum suggests that where there has been a deprivation of constitutional rights in the state

The *Mack* and *Lombard* decisions give effect to the unique underlying policies of Section 1983. The Civil Rights

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courts, federal courts will intervene); *Ney* v. *State of California*, 439 F.2d 1285, 1288 (9th Cir. 1971) (concludes that if a former state court proceeding could bar a civil rights suit, then the Civil Rights Act would in many cases be a dead letter); *Whitner* v. *Davis*, 410 F.2d 24, 31 (9th Cir. 1969) (federal court in a Section 1983 claim is not bound by a prior state court determination of adequacy of administrative remedy); *Avins* v. *Mangum*, 450 F.2d 932, 933 (2d Cir. 1971) (Plaintiff who had brought prior state court proceeding was not barred by res judicata in subsequent Section 1983 action.) Cf. *Brown* v. *Chastain*, 416 F.2d 1012, 1014 (5th Cir. 1969) (per Rives, dissent) *cert.* denied 397 U.S. 951; *Thistlethwaite* v. *City of New York*, 497 F.2d 339 (2d Cir. 1974) (per Oakes, dissent), *cert.* denied, 43 U.S. Law Week 3359. The question has been presented on numerous occasions in every circuit. See for example, *Lovely* v. *Laliberte*, 498 F.2d 1261 (1st Cir. 1974) *cert.* denied, 43 U.S. Law Week 3306; *Mastracchio* v. *Ricci*, 498 F.2d 1257 (1st Cir. 1974) *cert.* denied, 43 U.S. Law Week 3416; *Bricker* v. *Crane*, 468 F.2d 1228 (1st Cir. 1972) *cert.* denied 410 U.S. 930; *P.I. Enterprizes, Inc.* v. *Cataldo*, 457 F.2d 1012 (1st Cir. 1972); *Tang* v. *Appellate Division of New York Supreme Court*, 487 F.2d 138 (2d Cir. 1973) *cert.* denied, 40 L.Ed.2d 111; *Lackawanna Police Benevolent Association* v. *Balen*, 446 F.2d 52 (2d Cir. 1971); *Roy* v. *Jones*, 484 F.2d 96 (3d Cir. 1973); *Brown* v. *Chastain*, 416 F.2d 1012 (5th Cir. 1969) *cert.* denied, 397 U.S. 951; *Parker* v. *McKeithen*, 488 F.2d 553 (5th Cir. 1974); *Frazier* v. *East Baton Rouge Parish School Board*, 363 F.2d 861 (5th Cir. 1966); *Paul* v. *Dade County, Florida*, 419 F.2d 10 (5th Cir. 1969), *cert.* denied, 397 U.S. 1065; *Coogan* v. *Cincinnati Bar Association*, 431 F.2d 1209 (6th Cir. 1970); *Goss* v. *Illinois*, 312 F.2d 257 (7th Cir. 1963); *Rhodes* v. *Meyer*, 334 F.2d 709 (8th Cir. 1964) *cert. denied*, 379 U.S. 915; *Howe* v. *Brouse*, 422 F.2d 347 (8th Cir. 1970); *Scott* v. *California Supreme Court*, 426 F.2d 300 (9th Cir. 1970); *Flynn* v. *State Board of Chiropractic Examiners*, 418 F.2d 668 (9th Cir. 1969); *Hutcherson* v. *Lehtin*, 485 F.2d 567 (9th Cir. 1973); *Brown* v. *DeLayo*, 498 F.2d 1173, 1175 (10 Cir. 1974). Other courts have refused to apply collateral estoppel on the grounds that the issue was not clearly decided in a prior state court proceeding. *Brubaker* v. *King*, 505 F.2d 534, 537-8 (7th Cir. 1974); *Williams* v. *Liberty*, 461 F.2d 325, 327 (7th Cir. 1972); *Kaufman* v. *Moss*, 420 F.2d 1270 (3rd Cir. 1970) *cert.* denied, 400 U.S. 846.

Act of 1871, from which Section 1983 is derived, was born out of an apprehension that the states, and in particular the state courts, would not in all cases protect federal civil rights.

In *Mitchum* v. *Foster,* 407 U.S. 225, 240 and 242, Mr. Justice Stewart stated:

> "Proponents of the legislation noted that state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights.
>
> . . .
>
> "This legislative history makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created rights; it was concerned that state instrumentalities could not protect those rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts.
>
> "Section 1983 was thus a product of a vast transformation from the concepts of federalism that had prevailed in the late 18th century when the anti-injunction statute was enacted. The very purpose of §1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative or judicial.' *Ex parte Virginia,* 100 U.S. at 346, 25 L.Ed. at 679."

In *Mitchum,* this Court held that Section 1983 constitutes an exception to the anti-injunction statute, 28 U.S.C. §2283, recognizing that Section 1983 expressly authorizes

federal courts to review and *to enjoin* State court proceedings to protect a person's federal constitutional rights.*

The underlying policies of Section 1983, as applied in *Mitchum*—that of interposing the federal courts between the states and the people to protect the people from unconstitutional executive, legislative, or judicial action—forbid indiscriminate application of the doctrines of res judicata or collateral estoppel to bar Section 1983 claims.

The underlying policies are especially applicable here. Petitioner was involuntarily made a defendant in the prior state court condemnation proceedings, based on the sole circumstance of the location of her property. In those proceedings she was not afforded a meaningful opportunity to be heard at a meaningful time; an impermissible burden of proof was shifted to her to rebut a prima facie case based solely on certified copies of resolutions and ordinances. In this context her section 1983 claim involves:

(1) The total lack of procedural due process because of the absence of effective notice and hearing protections prior to the taking of petitioner's property. Judge Swygert correctly characterized the "hearing" opportunity afforded petitioner as "merely a mirage".

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* This Court has recognized, in other contexts, that Section 1983 occupies a unique niche under federal law. There is no need to exhaust administrative remedies before bringing a Section 1983 claim. *McNeese* v. *Board of Education*, 373 U.S. 668. It provides a remedy supplementary to the state remedy, *Monroe* v. *Pape*, 365 U.S. 167, 183. It is also closely analogous to the res judicata free treatment accorded habeas corpus actions. *Lauchli* v. *United States*, 405 U.S. 965 (dissent from denial of petition for *certiorari*).

(2) The "hearing" opportunity in the instant case was infected with fraud. The majority below noted, "[T]he fraud allegations are not merely conclusory; plaintiff alleges facts which suggest she would have had a strong case had she attempted to prove it in the state condemnation proceedings."*

Petitioner urges that in the context of this case the judgment entered in the prior state court proceedings cannot bar her present Section 1983 claims. The prior judgment seeks to deprive her of fee simple title to her property. But she never had a "hearing" in any sense required by the accepted standards of jurisprudence of this country. As Judge Swygert eloquently noted ". . . these allegations constitute a *classic section 1983 cause of action* . . . there was no way that her asserted claim could have been incorporated in the condemnation proceedings."

II.

THE DECISION OF THE COURT BELOW DENIES PETITIONER DUE PROCESS IN ACCORDING RES JUDICATA EFFECT TO THE STATE COURT CONDEMNATION JUDGMENT WHICH WAS ENTERED WITHOUT AFFORDING PETITIONER A MEANINGFUL OPPORTUNITY TO BE HEARD AT A MEANINGFUL TIME.

The procedural history of this case demonstrates that the condemnation proceedings did not come within gun-

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* This statement is curious since plaintiff alleges that the burden of proving that the area was not slum and blighted was an unconscionable and unconstitutional requirement to place on a single litigant isolated in a condemnation court; and further that she did not *know* of defendants' fraud at the time of the condemnation hearing.

shot of satisfying the requirements of this Court's standards of due process. In *Boddie* v. *Connecticut*, 401 U.S. 371, 378 this Court observed that there must be:

> "... 'an *opportunity* ... granted at a meaningful time and in a meaningful manner.' *Armstrong* v. *Manzo*, 380 U.S. 545, 552 ... (1965) (emphasis added), 'for (a) hearing appropriate to the nature of the case' ".

In *Fuentes* v. *Shevin*, 407 U.S. 67, 81, this Court in holding certain prejudgment replevin statutes unconstitutional stated:

> "... It has long been recognized that 'fairness can rarely be obtained by secret one-sided determination of facts decisive of rights ...'
>
> "If the right to notice and a hearing is to serve its full purpose, then it is clear that it must be granted at a time when the deprivation can still be prevented ..."

In *Goldberg* v. *Kelly*, 397 U.S. 254, 269, this Court succinctly commented that "the opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard." Yet, the court below, without even commenting on the nature or fairness of the condemnation proceeding, held that the condemnation judgment barred petitioner from maintaining her challenge to the constitutionality of the Illinois Act.

A judgment entered without affording a meaningful opportunity to be heard at a meaningful time, cannot be accorded res judicata effect in a subsequent action. To give effect to such a judgment itself violates due process. In *Windsor* v. *McVeigh*, 93 U.S. 274 this Court recognized that property could not be condemned and the owner denied his fee without proper notice and a hearing. Such a judgment is void and a later attack upon it will be allowed. When *Windsor* is read in conjunction with *Boddie, Fuentes, Gold-*

berg and other cases on what constitutes a fair and meaningful hearing, it is clear that the state court condemnation judgment which seeks to deprive petitioner of her fee title, cannot bar her right to assert in the federal courts that such deprivation is a denial of her fundamental constitutional rights.*

Petitioner did not have a meaningful opportunity to be heard at the state condemnation proceedings—she has never had a full and fair opportunity to defend her property. The Court below in indiscriminately attributing res judicata effect to a judgment entered in those proceedings, shatters fundamental notions of due process. *Hansberry* v. *Lee*, 311 U.S. 32, 44.

III.

THE HOLDING OF THE COURT BELOW FORECLOSES FEDERAL REVIEW OF STATE URBAN RENEWAL PROCEDURES EVEN THOUGH VIOLATIONS OF FEDERALLY GUARANTEED RIGHTS ARE CLAIMED UNDER SECTION 1983.

In *Harrison-Halsted Community Group, Inc.* v. *Housing and Home Finance Agency*, 310 F.2d 99 (7th Cir. 1962),

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* The 1964 declaration that petitioner's property and the area in general was slum and blighted was made without notice or hearing to petitioner or to other property owners. The 1968 condemnation was founded on that 1964 proceeding. Such proceedings result in ". . . 'mere arbitrary edicts, not to be regarded anywhere, as the judgment of the court.' " *Windsor*, p. 281.

Blonder-Tongue Laboratories, Inc. v. *University of Illinois Foundation*, 402 U.S. 313, 329 recognized the principle in the context of a patent case. Mr. Justice White stated: "Although neither judges, the parties, nor the adversary system performs perfectly in all cases, the requirement of determining whether the party against whom an estoppel is asserted had a full and fair opportunity to litigate is a most significant safeguard." See *Rachal* v. *Hill*, 435 F.2d 59, 62-4 (5th Cir. 1970) *cert.* denied, 403 U.S. 904; *Lynne Card Fashions, Inc. v. Cranston Print Works Co.*, 453 F. 2d 1177, 1183-4 (3rd Cir. 1972).

cert. denied, 373 U.S. 914 and in *Green Street Assn.* v. *Daley,* 373 F.2d 1 (7th Cir. 1967), *cert.* denied, 387 U.S. 932, the Seventh Circuit dismissed claims challenging the constitutionality of the Illinois urban renewal laws on the grounds that state courts would protect the federal rights claimed abridged. In *Harrison-Halsted,* the plaintiffs filed suit while state court condemnation proceedings were pending. In *Green Street,* the plaintiffs filed suit before state court condemnation proceedings were filed.

Here petitioner filed her Section 1983 claim challenging the urban renewal procedures on federal constitutional grounds after the state court condemnation proceedings. In dismissing petitioner's claim, the court below stated, citing *Harrison-Halsted* and *Green Street* (App. 26):

> "We adhere to the rule in *Green Street* that cases like this presenting challenges to urban renewal programs are to be decided in the state court condemnation proceedings 'if the taking is ostensibly for a public purpose, *even though violations of federally guaranteed rights are claimed.*'"

The holding, when read together with *Green Street* and *Harrison-Halsted* makes urban renewal totally immune from constitutional challenges in federal court; and, it directly conflicts with decisions of this Court. *Monroe* v. *Pape,* 365 U.S. 168, 183, noted:

> "It is no answer that the state has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."

In *McNeese* v. *Board of Education,* 373 U.S. 668, 672 Mr. Justice Douglas stated regarding section 1983:

> "That is the statute that was involved in *Monroe* v. *Pape* (U.S.) supra; and we reviewed its history at

> length in that case. 365 U.S. at 171 et seq. The purposes were several fold—to override certain kinds of state laws, to provide a remedy where state law was inadequate, 'to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice' (id. 365 U.S. 174), and to provide a remedy in the federal courts supplementary to any remedy any State might have. Id. 365 U.S. 180-183."

Mitchum v. *Foster,* 407 U.S. 225, highlights the underlying policies of Section 1983 and clearly instructs that federal courts must actively protect the federal rights guaranteed under that Section.

The Court below has deprived petitioner of a federal forum "even though violations of federally guaranteed rights are claimed" under Section 1983. In so doing, the Court below ignores the holdings of *Monroe, McNeese* and *Mitchum.*

IV.

THE COURT BELOW ERRED IN HOLDING THAT AN ESSENTIAL ELEMENT OF PETITIONER'S SECTION 1983 CLAIM WAS THAT THE URBAN RENEWAL AREA WAS NOT SLUM AND BLIGHTED. THE HOLDING, IN EFFECT, CONDONES THE VIOLATION OF CIVIL RIGHTS TO ACHIEVE AN END WHICH COULD HAVE BEEN ACHIEVED BY LAWFUL MEANS.

The Court below held that an essential element of petitioner's Section 1983 claim was that the Urban Renewal Area was not slum and blighted. The court reasoned that if the area "were in fact slum and blighted, the respondents' motives in designating it for renewal would be irrelevant . . . and the renewal project could proceed despite any fraudulent supporting statements." (App. 23). The court

held that petitioner was estopped from challenging the slum and blight determination, since she refused to present evidence in the state court, and that therefore her section 1983 claim was barred.

With all deference, this is incredible! In holding that an essential element of the Section 1983 claim is that the area was not slum and blighted, the court condones respondents' fraudulent conduct and condones the violation of petitioner's civil and constitutional rights on the grounds that the end result might have been accomplished by lawful means. Constitutional rights have never been planted in such expedient ground. *Saunders* v. *Shaw*, 244 U.S. 317. "If the government becomes a lawbreaker . . . it invites anarchy." *Mapp* v. *Ohio*, 367 U.S. 643, 659.

The respondents here fraudulently designated the Urban Renewal Area slum and blighted; they secured massive federal funding through false applications; they obtained a state court condemnation judgment by using fraudulent evidence, and by depriving petitioner of due process of law. At this stage of these proceedings, the actual condition of the Urban Renewal Area is irrelevant. Petitioner's civil and constitutional rights have been violated. The issues raised here were not previously litigated; and, petitioner is not now barred by collateral estoppel from raising them. *Commissioner* v. *Sunnen*, 333 U.S. 591, 598-600; *Brubaker* v. *King*, 505 F.2d 534, 537-8 (7th Cir. 1974).

V.

THE DECISION OF THE COURT BELOW, THAT PETITIONER WAS NOT A PROPER CLASS REPRESENTATIVE TO CHALLENGE THE CONSTITUTIONALITY OF THE ILLINOIS URBAN RENEWAL CONSOLIDATION ACT OF 1961 BECAUSE HER INDIVIDUAL CLAIM WAS BARRED BY RES JUDICATA OR COLLATERAL ESTOPPEL IS IN ERROR AND DIRECTLY CONFLICTS WITH DECISIONS OF THE COURTS OF APPEALS FOR THE FOURTH, FIFTH AND SIXTH CIRCUITS.

Petitioner challenged the constitutionality of the Illinois Act as representative of a class pursuant to Rule 23, Federal Rules of Civil Procedure. The court below held that since petitioner's claim was barred by res judicata and collateral estoppel "she is not a proper class representative." (App. 27). The class claims were dismissed. The decision is in conflict with decisions of Courts of Appeals of the Fourth, Fifth and Sixth Circuits.

In *Huff* v. *N.D. Cass Company of Alabama*, 485 F.2d 710, 712 (5th Cir. 1973), the court affirmed the dismissal of the only named plaintiff's individual claim. However, regarding the class action allegations, Judge Godbold, speaking for the court, *en banc*, stated:

> ". . . the standard for determining whether a plaintiff may maintain a class action is not whether he will ultimately prevail on his claim."

The case was remanded to determine whether the requirements of Rule 23 were otherwise satisfied even though the sole named plaintiff's claim was disposed of on the merits. Accord: *Francis* v. *Allied Service Company of Texas, Inc.*, 486 F.2d 597, 598 (5th Cir. 1973); *Martin* v. *Thompson Tractor Company*, 486 F.2d 510, 511 (5th Cir. 1973).

Roberts v. *Union Company,* 487 F.2d 387, 389 (6th Cir. 1973) reached the same result. The Court stated:

> "We hold that the district court erred in dismissing the class aspects of the action. First, dismissal of appellant's individual claim of discrimination is not dispositive, without more, of her standing to prosecute the class action."

The district court was directed to consider whether the requirements of Rule 23 were satisfied.

Moss v. *Lane Co., Inc.,* 471 F.2d 853, 855-6 (4th Cir. 1973) similarly held that the dismissal or mooting of a named plaintiff's individual claim does not destroy his right to litigate the issues on behalf of the class.

The interests petitioner seeks here to vindicate are fundamental interests of all property owners. She seeks a declaratory judgment that the Illinois Act is unconstitutional on its face and as applied. The sole asserted difference between petitioner and those she seeks to represent is that her individual claim was found below to be precluded Other courts have refused to read into Rule 23 a requirement that the named plaintiff have a viable claim. None should be written here.

VI.

THE COURT BELOW ERRED IN HOLDING THAT THE ILLINOIS URBAN RENEWAL CONSOLIDATION ACT OF 1961 WAS NOT A STATEWIDE STATUTE WITHIN THE MEANING OF 28 U.S.C. 2281. THE DECISION IS CONTRARY TO THE RATIONALE OF SAILORS v. BOARD OF EDUCATION OF COUNTY OF KENT, 387 U.S. 105, AND DIRECTLY CONFLICTS WITH THE HOLDING OF A THREE JUDGE COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The court below held that the district court's refusal to convene a three judge court was proper, holding that while

the challenged Illinois Act applied generally to all communities . . . "having more than 500,000 inhabitants . . ." Ill. Rev. Stat. ch. 67½, §91.104, the Act, in effect, applied only to the City of Chicago and, therefore, the Act was not a "state statute" within the meaning of 28 U.S.C. §2281. Judge Swygert dissented and would have convened a three judge court.

Sailors v. *Board of Education of County of Kent,* 387 U.S. 105, 107 instructed that where a state statute applies generally to all governmental units of a particular type, the statewide application requirement of 28 U.S.C. §2281 is satisfied. Mr. Justice Douglas stated:

> "We conclude that a three-judge court was properly convened, for unlike the situation in *Moody* v. *Flowers,* 387 U.S. 97, 18 L. Ed. 2d (643) 87 S.Ct. 1544, this is a case where the state statute that is challenged (Mich. Stat. Ann. Sec. 15. 3294(1)) *applies generally to all Michigan county school boards of the type described.*"

See also: *Alabama State Teachers Association* v. *Public School and College Authority,* 393 U.S. 400.

In *Williams* v. *Osser,* 326 F.Supp. 1139 (E.D. Penn. 1971) the three judge court held:

> "The Permanent Registration Act is applicable to all cities in Pennsylvania with a population large enough to qualify as first-class cities. Consequently the statute is one of statewide application notwithstanding that *Philadelphia is the only city which currently fits that classification.*"

The court below ignored these holdings. Its holding whittles away the jurisdiction of a three-judge court and expands the jurisdiction of a single judge to review the constitutionality of a state statute. The Illinois Act is a state

statute which applies generally to all municipalities "of the type described". It has a statewide impact; it is of statewide concern. A three-judge court should have been convened to review its constitutionality.

CONCLUSION

For all of the above stated reasons, we pray that the Petition be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
October 12, 1972

MEMORANDUM OPINION AND ORDER

This matter is now before the Court on plaintiff's motion to convene a three-judge court pursuant to 28 U.S.C. §2281 to consider the merits of Counts II, III and IV of the complaint which challenge the constitutionality of the Urban Renwal Consolidation Act of 1961, Ill. Rev.Stat. ch. 67 1/2, §91.101 et seq. Plaintiff's motion for oral argument on this issue is denied; the Court finds the relevant law to be sufficiently clear to admit of decision without argument.

This Court's inquiry is limited to determining whether the constitutional question raised is substantial, whether the complaint formally alleges a basis for equitable relief, and whether the case otherwise comes within the requirements of the three-judge statute. Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 715(1962).

In recognition of the burden which three-judge court proceedings place upon the federal judiciary, the Supreme Court has often admonished that §2281 is to be strictly construed. See Board of Regents of Univ. of Tex. Sys. v. New Left Educ. Project, 92 S.Ct. 652, 655(1972). In line with this policy, the three-judge court statute has been construed to be inapplicable to cases challenging state statutes having only local impact and application. E.g. Board of Regents, supra at 653-54; Moody v. Flowers, 387 U.S. 97, 101 (1972).

The Urban Renewal Consolidation Act, by its terms, applies only to "urban communities within ...[Illinois] with more than 500,000 inhabitants ...." Ill.Rev.Stat. ch.67 1/2, §91.102. This statute clearly applies only to the City of

Chicago and cannot in the reasonable future apply to any other Illinois municipality. Skolnick v. Mayor and City Council, No. 66-C-2134 (N.D. Ill. June 12, 1967), aff'd, 415 F. 2d 1291 (7th Cir. 1969).

Where statutes have appeared to be of statewide application, but have been found, upon closer examination, to have only local impact, the courts have refused to convene three-judge courts. Bradley v. Milliken, 433 F.2d 897, 900 (6th Cir. 1970); Chavis v. Whitcomb, 305 F.Supp. 1359, 1362 (S.D. Ind. 1969); Skolnick, supra. Because this Court finds the logic of these cases to be sound, in accordance with the Supreme Court's policy on the applicability of §2281, Board of Regents, supra at 654, and pertinent here, plaintiff's motion to convene a three-judge court will be denied.

IT IS SO ORDERED.

/s/R.W. McLaren
United States District Judge

DATED: October 12, 1972

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
April 18, 1973

OPINION

MCLAREN, District Judge:

This matter is before the Court on plaintiff's motions for reconsideration of the Court's denial of her motion to convene a three-judge court, for leave to amend the complaint and file a more definite statement, and for oral argument, and on defendants' motions to dismiss. Plaintiff's motions for reconsideration and for oral argument are denied; her motions for leave to amend the complaint and to file a more definite statement are granted. Defendants' motions to dismiss, considered in relation to the complaint as amended and made more specific, are granted.

I

This action grows out of a condemnation proceeding filed in the Circuit Court of Cook County, in which judgment was entered against plaintiff. This was affirmed in Chicago v. Walker, 50 Ill.2d 69, 277 N.E.2d 129 (1971), cert. denied, Blankner v. Chicago, 408 U.S. 931, 92 S.Ct. 2498 (1972). That condemnation proceeding was brought pursuant to the Illinois Urban Renewal Consolidation Act ("Urban Renewal Act"), as amended, Ill.Rev. Stat. ch. 67 1/2, §91.101, et seq. and the Illinois Eminent Domain Act, Ill Rev. Stat. ch. 47, §1, et seq. Here, plaintiff alleges that her civil rights were violated by acts

of defendants that led to the condemnation of her property and she challenges the constitutionality of the Urban Renewal Act.[1]

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1. Some of the acts complained of involve steps taken preparatory to the condemnation proceeding. On July 18, 1960, the University of Chicago submitted to the City of Chicago ("City") its South Campus proposal, which covered part of the Urban Renewal Area involved here. In January 1961, the City, through the Chicago Land Clearance Commission, and acting in conjunction with others, undertook a survey of the total Woodlawn area, of which the Urban Renewal Area is a part. The findings were published in 1962. On October 1, 1964, the Department of Urban Renewal ("Dur") published its own study of the Urban Renewal Area in which it was concluded that the said area was slum and blighted. On October 8, 1964 the DUR adopted a resolution determining the Urban Renewal Area to be slum and blighted. On November 16, 1964, the Chicago City Council passed an Ordinance adopting the DUR Resolution and approving acquisition of the area for slum clearance and redevelopment.

The City, on October 15, 1965, submitted an application to the Housing and Home Financing Agency (presently part of the United States Department of Housing and Urban Development) for a loan and grant totalling $12,657,353.00 to defray the cost of land acquisition within the Urban Renewal Area. Said application was later approved.

On November 11, 1966, the City Council adopted a Development Plan for the Urban Renewal Area which included the sale of South Campus by the City to the University of Chicago.

During the pendency of this case and the appeal from the condemnation proceeding, plaintiff has remained in possession of her

Count I alleges that a conspiracy existed, the purpose of which was to fraudulently and falsely cause the 60th-Cottage Grove Slum and Blighted Redevelopment Project ("Urban Renewal Area") to be declared a slum and blighted area within the meaning of the Urban Renewal Act so that the City could obtain the plaintiff's property and other land within the Urban Renewal Area through its power of eminent domain, in order to turn it over to the University. It is alleged that the complaint states a claim under 42 U.S.C. §§1983, 1985(2), 1985(3), 1986 and 1988, and that jurisdiction exists under 28 U.S.C. § 1343.

It is alleged that pursuant to this conspiracy various false reports and maps were prepared which eventually resulted in adoption of a Resolution by the Department of Urban Renewal ("DUR") and an Ordinance by the City Council of Chicago to the effect that the Urban Renewal Area was slum and blighted. At the condemnation proceeding, the Resolution and Ordinance were submitted by the City as prima facie evidence that the Urban Renewal Area was slum and blighted. Plaintiff alleges that this constituted fraudulent misrepresentation of facts to the Circuit Court of Cook County.

Plaintiff also alleges that the property owners in the Urban Renewal Area were not given notice of the findings, determinations or actions taken by DUR or City Council, nor provided with a hearing. This allegedly violated plaintiff's right to due process and equal protection as guaranteed by the

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building and has continued to collect rents, although she has not been required to pay the taxes or mortgage.

United States Constitution.

At the condemnation proceeding, plaintiff filed a traverse[2] and motion to dismiss which challenged (1) the conclusion that the area was slum and blighted, (2)the right of the City of Chicago ("City") to acquire her property by the exercise of the power of eminent domain, and (3) the purported public purpose of the taking. The motions were denied. At the hearing on the traverse and motion to dismiss, after the City submitted the resolution and ordinance, plaintiff declined to offer any evidence on the ground that the City had not established a prima facie case. Chicago v. Walker, supra.[3]

Count I also alleges that defendant George Romney, who was Secretary of the United States Department of Housing and Urban Development ("HUD") at the time suit was commenced, and John Waner, Acting Area Administrator of HUD, failed to have the purported Urban Renewal Area inspected to determine whether it satisfied federal requirements for funding. It is alleged that they relied instead upon the false and fraudulent information, maps

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2. A "traverse" is a denial of the material allegations of the complaint. Black's Law Dictionary (4th ed. rev. 1968). See Gradle v. Hoffman, 105 Ill. 147, 155 (1882).

3. This election was made in the face of state court decisions that upheld giving prima facie weight to such resolutions and ordinances. Chicago v. Barnes, 30 Ill.2d 255, 195 N.E. 2d 629, 631(1964); Chicago Land Clearance Comm'n v. Quinn Home Builders, 11 Ill.2d 111, 142 N.E.2d 60, 62(1957).

and data supplied by the other defendants and that as a result federal funds have been improperly granted to City and DUR.

Count II realleges much of Count I and attacks the constitutionality of the Urban Renewal Act. It alleges that the failure to provide for a hearing prior to the time at which an area is designated as slum and blighted violates due process under the Fourteenth Amendment to the United States Constitution. Count II further alleges that the Urban Renewal Act's definition of a slum and blighted area, Ill. Rev. Stat. ch. 67 1/2, §91.103(i) is unconstitutionally vague on its face and as applied and thus denies plaintiff a fair opportunity to respond in actions taken against her property. The statute is also attacked on the ground that, as interpreted and applied by the Illinois courts, it unconstitutionally shifts the burden of proof to the defendants in condemnation proceedings and allows the City to establish the fact of slum and blight by submitting an Ordinance of the City Council and a Resolution of DUR.

Count III alleges that the Urban Renewal Act violates equal protection of the laws as guaranteed by the Fourteenth Amendment in that notice and a public hearing must be provided before DUR can declare an area to be a conservation area as defined by Ill.Rev.Stat.ch. 67 1/2, §21.121, whereas no notice and hearing must be provided prior to a declaration that an area is slum and blighted.

Count IV alleges that the condemnation procedure under the Urban Renewal Act constitutes a bill of attainder in violation of Article I, §10 of the United States Constitution.

II.

Defendant, the University of Chicago, ("the University") has challenged the Court's juris-

diction over the subject matter of this suit.[4] As to Count I, it contends that plaintiff seeks to protect a property right and that such property rights are not protected by the civil rights provisions of 42 U.S.C. §1983, 1985(2), 1985(3) and 1986. This property rights/personal rights distinction has been rejected by the Supreme Court. Lynch v. Household Finance Corp., 405 U.S.538 (1972). The Court considers it the better policy to assume jurisdiction of an alleged violation of civil rights and then determine whether the allegations state a claim. See Bell v. Hood, 327 U.S. 678, 682 (1946); Joe Louis Milk Co. v. Hershey, 243 F.Supp. 351, 354-55 (N.D.Ill. 1965).

Were it to be held that Romney and Waner had a statutory duty to investigate the Urban Renewal Area, and that plaintiff's allegation in this regard was sufficient to state a claim, this Court would have jurisdiction under 28 U.S.C. §1331 and not under 28 U.S.C. 1343. Leave has been granted plaintiff to amend the complaint in order to allege §1331 as a jurisdictional base.

The requisite jurisdictional amount has not been alleged with respect to the claims against Romney and Waner. In searching the whole record, as this Court is permitted to do with respect to jurisdictional allegations, it appears, however, that a federal grant in excess of $12,000,000.00 is at issue. Accordingly, the Court concludes that it has jurisdiction over Count I.

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4. Plaintiff has requested leave to amend her complaint in order to add to the jurisdictional allegations a claim that the action is brought under 28 U.S.C. §1331 and that it arises under the provisions of 42 U.S.C. §1985 (2). Leave is granted and the complaint shall be deemed hereafter to be so amended. See 28 U.S.C. §1653.

The jurisdictional attack upon Counts II, III and IV focuses upon the alleged failure of these counts to state a claim. The issues thus raised will be considered with respect to the various arguments urged in support of the motions to dismiss for failure to state a claim, infra.

III.

In its Memorandum Opinion and Order dated October 12, 1972, this Court denied plaintiff's motion to convene a three-judge court on the basis of its determination that the Urban Renewal Act is not a statute of state-wide applicability. The authority cited in plaintiff's brief in support of its motion to reconsider that determination is not persuasive; the Court remains convinced that the decision is in accordance with the Supreme Court's interpretation of 28 U.S.C. §2281. See Board of Regents v. New Left Educ. Project, 404 U.S. 541 (1972).

Plaintiff asserts now for the first time that her suit involves the constitutionality of the Eminent Domain Act, Ill. Rev. Stat. ch. 47, §1, et seq. The complaint does not request that the enforcement of that statute be enjoined; §2281 is therefore inapplicable. Even if such a request were to be added, it is clear that the gist of what plaintiff seeks is relief not from the act controlling condemnation proceedings but from a judicially developed rule of evidence which allows the state to make out a prima facie case by introducing the department's resolution and the ordinance approving it. City of Chicago v. Walker, 50 Ill. 2d 69, 277 N.E.2d 129, 130 (1972); Decatur Park District v. Parker, 368 Ill. 442, 14 N.E. 2d 490, 492 (1938).[5]

5. As noted above, plaintiff chose to offer no evidence and to attack the prima facie rule, despite recent state court decisions upholding that rule.

Accordingly, the motion to reconsider the order denying plaintiff's request for a three-judge court is denied.

IV.

On August 4, 1972, the federal defendants moved that plaintiff be ordered to file a more definite statement specifying which statutes and/or regulations were allegedly violated. The motion was granted; however, no date was set for filing of such statement.

Fed.R.Civ.P. 12(e) provides that:

> "[i]f the motion [for a more definite statement] is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just."

As of September 28, 1972, plaintiff had not complied with the Court's order and on that date the government moved pursuant to Rule 12 (e) to strike the allegations against the federal defendants. Not until November 6, 1972, did plaintiff ask leave to file a more definite statement.

Counsel for plaintiff has filed a sworn affidavit in support of its motion for leave to file the more definite statement. Counsel offers no explanation for his long delay, but simply states that the government was advised in early October that he would comply with the Court's order. However, the federal defendants do not appear to have been prejudiced by the delay. They have responded in their reply brief to the matter raised in the more definite statement. Leave is granted to file the more definite statement and the motion to

strike the allegations is denied.

V.

Count I purports to be a civil rights action. The plaintiff's memorandum at pages 7-8 summarizes the theory of her claim, as follows:

> "The Defendants acting in concert deprived Plaintiff of a meaningful opportunity to protect her property by: 1) substantially introducing evidence based on fraudulent characterizations of property in a deliberate attempt to deprive her of her home, and 2) procedurally taking advantage of unconstitutional state laws to deny her a hearing or opportunity to be heard at a meaningful time. . . "

Taking the second point first, plaintiff essentially asserts that her civil rights were violated in that defendants took advantage of unconstitutional state laws in order to deprive her of her property. It appears that plaintiff and amici curiae in the state court proceedings challenged the constitutionality of the state laws at that time and that the questions of law presented here were resolved against them.[6] Although the federal civil rights claim is not completely barred by the doctrine of res judicata, it appears to this Court that plaintiff is barred from relitigating the issues previously decided. Commissioner of Internal Revenue v. Sunnen, 333 U.S.591,598 (1948); Goss v. Illinois, 312 F.2d 257, 259 (7th Cir. 1963). This holds true even when federal constitutional questions are decided

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6. See note 3 and referenced text, supra.

by state courts. Gare v. Cole, 166 F.Supp. 129 (S.D.N.Y.1958), aff'd 263 F.2d 244 (2d Cir.), cert. denied, 359 U.S. 978(1959). When the issue of the constitutionality of the statutes involved has already been resolved against a plaintiff, subsequent allegations that utilization of the statutes constitutes a denial of due process fail to state a claim.

Plaintiff's remaining contention under Count I is that her civil rights were violated at the condemnation proceeding by the introduction of false evidence. In order to state a claim under 42 U.S.C. §1983, a federally protected right must be infringed. See Adickes v. S.H. Kress & Co., 398 U.S. 144(1970). In Kaufman v. Moss, 420 F.2d 1270(3d Cir.), cert.denied, 400 U.S. 846 (1970), the court stated at 1272, n.3. that:

> ". . .(W)e believe that claims of a conspiracy by state officers to convict a person of a crime by the knowing use of perjured testimony, when set forth with sufficient specificity, are not categorically deficient in stating a claim under the Civil Rights Act."

In reaching this conclusion, the court relied heavily on the Supreme Court cases holding that knowing use of false testimony by the state against an accused at a criminal trial is a denial of due process as guaranteed by the Fourteenth Amendment. See Miller v. Pate, 386 U.S. 1 (1967); Napue v. Illinois, 360 U.S. 264 (1959); Alcorta v. Texas, 355 U.S. 28(1957); Pyle v. Kansas, 317 U.S. 213(1942).

In Hurlburt v. Graham, 323 F.2d 723, 725 (6th Cir. 1963), the court reached a different conclusion than in the later Kaufman case.

In this civil case, even accepting as true the allegations that the City Council Ordinance and the DUR Resolution were false and

and fraudulent, the Court concludes that under the circumstances the plaintiff was not denied due process.

Kaufman can be distinguished from the instant suit in that it was a criminal prosecution in which the allegedly false testimony was introduced and the court relied on Supreme Court cases involving criminal prosecutions. In those cases, the Supreme Court essentially decided that fundamental fairness was violated by the state. That is a particularized finding, and what is fundamentally unfair and a denial of due process in a criminal context -- where liberty is at stake -- is not necessarily such in a civil case.

It should be noted that the federal courts have been very reluctant to act in effect as courts of appellate jurisdiction when it is alleged that state court proceedings violated due process and that a claim exists under § 1983. See Brown v. Duane, 402 F.2d 341 (7th Cir. 1969); Bazine v. Sheehan, 326 F.2d 490, 491 (7th Cir. 1963); Smith v. Village of Lansing, 241 F.2d 856, 859 (7th Cir. 1957); Moffett v. Commerce Trust Co., 187 F.2d 242, 248 (8th Cir. 1951); Bottone v. Lindsley, 170 F.2d 705, 707 (10th Cir.), cert. denied, 336 U.S. 944 (1948); Landowners Consideration Push v. Montana Power Co., 300 F.Supp. 54 (D. Mont. 1969). This reluctance stems from the necessity that every unsuccessful litigant in state court proceedings not be permitted to demand relief from alleged errors on the ground that due process was denied.

Granting that each of the cited cases may be distinguishable from the instant suit, this Court cannot overlook this well-founded proposition when deciding whether to extend Kaufman to a situation such as that presented here. Taking all factors into account, this Court is of the view that any such extension is unsup-

ported by authority and would be unwise.

However, aside from these considerations, it should be remembered that although plaintiff contended at the time of the condemnation proceeding that the area was not slum and blighted, and that defendants took action to serve their own purposes, she chose not to present evidence either to contest the slum-and-blight determination, or to expose the alleged improper use of the statute.

Having concluded that the facts alleged fail to show invasion of a federally protected right, the Court holds that Count I does not state a claim under §1983.

In addition to reliance on §1983, plaintiff asserts that defendants violated §1985(2) and 1985(3). In Griffin v. Breckenridge, 403 U.S. 88, 102(1971), the Supreme Court stated that in order to avoid interpreting §1985(3) as a general tort law, full effect should be given to the congressional purpose by requiring invidiously discriminatory motivation as an element. See Azar v. Conley, 456 F.2d 1382, 1385-86(6th Cir. 1972); Action v. Gannon, 450 F.2d 1227, 1231-32 (8th Cir. 1971); Place v. Shepard, 446 F.2d 1239, 1245-46 (6th Cir. 1971); Klaschka v. Driver,411 F.2d 436, 447 (2d Cir. 1969). Because of their common origin, it would appear that discriminatory motivation is required in §1985(2) as well as in §1985(3). In the instant suit, plaintiff has not alleged discrimination. Accordingly, the complaint fails to state a claim under §1985(2) and §1985(3).

In the absence of a violation of §1985, no claim can be stated under §1986. Section 1988, which is alleged as a basis for jurisdiction, does not provide a basis for relief.

VI.

With respect to the allegations in Count I against Romney and Wagner, plaintiff's position appears to be that the officials had an obligation to inspect the Urban Renewal Area to compare the documentation supporting the City's application for federal assistance with the actual condition of the neighborhood. Judging from the more definite statement that has been filed, the alleged statutory sources for this alleged duty are 42 U.S.C. §§1451(c) and (e) and 1460(c).

Section 1451(c) states that no loan or capital grant shall be made unless the locality submits a "workable program for community improvement" and the Secretary "determines that such program meets the requirements of this subsection . . . ." Section 1451(e) states:

> "No loan or grant contract may be entered into by the Secretary for an urban renewal project unless he determines that (1) the workable program for community improvement presented by the locality pursuant to subsection (c) of this section is of sufficient scope and content to furnish a basis for evaluation of the need for the urban renewal project; and (2) such project is in accord with the program."

Section 1460(c) states in part that:

> "Not withstanding any other provision of this subchapter, (A) no contract shall be entered into for any loan or capital grant under this subchapter for any project which provides for demolition and removal of buildings and improvements unless the Secretary determines that the

objectives of the urban renewal plan could not be achieved through rehabilitation of the project area . . . ."

These provisions do not explicitly place on the Secretary and his agents the task of verifying the documentation in a proposal. The program for community improvement required by §1451 is a broad outline against which particular projects are to be measured. Its apparent purpose is to insure that a rational overall plan is adopted and that specific projects are integrated within that plan.

Section 1460(c) reflects a preference for rehabilitation of existing housing instead of its demolition and removal. To that end the Secretary must compare the objectives of the urban renewal plan with the project area. That does not necessitate the verification of the proposal's documentation, which plaintiff contends is required of the Secretary.

This Court is reluctant to imply a statutory duty to verify the data submitted by DUR. The emphasis in the program is upon local planning. See Harrison-Halsted Community Group, Inc. v. Housing & Home Finance Agency, 310 F. 2d 99, 104 (7th Cir. 1962), cert. denied, 373 U.S. 914(1963). Short of on-site inspection of the area and its buildings, the federal defendants would be unable to discover that the documentation was fraudulent. The considerable manpower that would be required for such inspection appears inconsistent with a program under which federal involvement is intended to be minimal.

Plaintiff cites some recent cases in which the federal government was found to have responsibility to supervise local housing and urban renewal programs. Gautreaux v. Romney, 448 F. 2d 731 (7th Cir. 1971); Shannon v. HUD, 436 F.

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2d 809 (3d Cir. 1971); Garrett v. City of Hamtramk, 335 F.Supp. 16 (E.D. Mich.1971). However, each involved alleged racial discrimination with respect to which federal officials have more explicit responsibilities. See 42 U.S.C. §2000(d). Insofar as plaintiff asserts that there was a duty to verify the documents, no constitutional right is involved. In Gautreaux and Garrett the federal officials had knowledge of the racial discrimination. Here, there is no allegation that the federal government was aware that the documentation was fraudulent.

VII.

In Counts II, III and IV, plaintiff challenges the constitutionality of the Urban Renewal Act, Ill. Rev.Stat. ch. 67 1/2, §91.101, et seq. Some of these same constitutional issues were litigated in the state court proceeding, City of Chicago v. Walker, supra, and the plaintiff is barred by the doctrine of res judicata from raising them again here.

State courts have concurrent jurisdiction with the federal courts to decide claims asserted under the United States Constitution. It is a well established rule that a judgment upon the merits in one suit is res judicata in another where the parties and the subject matter are the same. No exception exists when constitutional questions are involved. See Grubb v. Public Utilities Comm'n, 281 U.S. 470 (1930); E.F. Elliott Advertising Co. v. Metropolitan Dade County, 425 F.2d 1141, 1148, (5th Cir.), petition for cert. dismissed, 400 U.S. 805(1970); Brown v. Chandler, 416 F.2d 1012, 1014 (5th Cir. 1969), cert. denied, 397 U.S. 951(1970); Deane Hill Country Club, Inc. v. City of Knoxville, 379 F.2d 321, 325-26 (6th Cir.), cert. denied, 389 U.S. 975(1967); Kavasek v. White, 339 F.2d 861 (10th Cir. 1965).

Claims that might have been presented in the prior action, as well as those that actually were litigated, are barred. See Grubb, supra, at 479, and cases cited therein. Denial of plaintiff's writ of certiorari by the Supreme Court cannot be taken as having any meaning with respect to law of the case, but it clearly signifies that appellate review has been exhausted. As noted in Deane Hill Country Club, supra, at 326, under these circumstances the plaintiff has had her day in court.[7]

Plaintiff argues that application of the res judicata doctrine would result in her being caught up in a vicious circle between that doctrine and the abstention doctrine. A vicious circle does not exist in this case. There is no indication that a federal court abstained prior to the adjudication in the state courts. Had that happened, plaintiff could have reserved her federal claims for determination by the district court. See England v. Louisiana State Bd. of Medical Examiners, 375 U.S. 411, 421(1964). Deane Hill Country Club, supra, at 326.

Plaintiff's allegations of a class action do not bar application of the res judicata doctrine. The class representative must have a valid claim as a condition precedent for a class action. Res judicata defeats plaintiff's

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7. The only case plaintiff cites in opposition to this proposition is Long v. Avery, 251 F. Supp. 541 (D. Kan. 1965). There, however, between the time of the state adjudication and the filing of the federal suit, the challenged state statute had been modified and the Supreme Court of the state had altered its position in a subsequent case. Res Judicata would not apply and the comments cited by plaintiff from the Long opinion are dicta.

claim and it cannot be revived by class allegations.

Granted that some defendants here were not parties to the state action and, assuming arguendo that res judicata bars only claims between the same parties, Counts II, III and IV must be dismissed as moot as to these additional defendants. It is the City of Chicago that acquires title to plaintiff's property under the Urban Renewal Act which is challenged here. The City of Chicago was a party to the state court proceedings. Once it has been decided that plaintiff cannot litigate the claims in Counts II, III and IV against the City of Chicago, she has no legally cognizable right in the property and a case or controversy no longer exists between plaintiff and the other defendants. Dismissal of these counts is therefore required. See Hall v. Beals, 396 U.S. 45, 48 (1969).

IT IS SO ORDERED.

ENTERED:

/s/ R.W. McLaren
United States District Judge

APPENDIX C

In the

United States Court of Appeals

For the Seventh Circuit

Nos. 73-1568, 73-1569

FREDERIKA BLANKNER,

Plaintiff-Appellant,

v.

THE CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division — No. 72 C 1810
Richard W. McLaren, *Judge.*

HEARD APRIL 17, 1974 — DECIDED OCTOBER 24, 1974

Before SWYGERT, *Chief Judge*, FAIRCHILD and CUMMINGS, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* In her complaint, plaintiff alleged that defendants conspired fraudulently to deprive her of her property without due process of law, thus contravening the Civil Rights Act. As a class representative, she also challenged the constitutionality of the Illinois Urban Renewal Consolidation Act of 1961 (Ill. Rev. Stats. 197?, ch. 67½, §§ 91.101 *et seq.*) and requested the convening of a three-judge court to decide that question. The district judge refused to convene a three-judge court, and the defendants' motions to dismiss the complaint were subsequently granted pursuant to an extensive, unreported memorandum opinion. Thereafter, a motion for leave to file an amended complaint and for reconsideration was denied. We affirm.

The verified complaint was in four counts. The first count showed that plaintiff was the owner of an apartment house at 6043 South Woodlawn Avenue in Chicago. The building is presently occupied by plaintiff and her tenants. It is located in the 66-acre South Campus portion of a 105.6-acre Urban Renewal Area and is immediately adjacent to the south end of the University of Chicago. Count I alleged a conspiracy between the University of Chicago and the Department of Urban Renewal of the City of Chicago. The University allegedly desired to acquire property south of its campus, while the City wished to receive credits under Section 112 of the 1949 National Housing Act (42 U.S.C. § 1463). Both goals could be accomplished if the University purchased urban renewal land from the municipality. The City's credits could then be used to finance unrelated renewal projects in other areas of the City.

Plaintiff charges that pursuant to this conspiracy, defendants falsely caused the Urban Renewal Area to be declared a slum and blighted area and acquired it by purchase and condemnation. The condemnation was allegedly effected by unfair procedures. The University purchased the South Campus at a below market price while the City acquired $14,000,000 of urban renewal credits.

The City applied for $12,000,000 in funds from the federal government in 1965 to defray the cost of acquiring this Urban Renewal Area property. It is accused of making false and inaccurate claims in this application that buildings, including plaintiff's, were slum and blighted. In 1967, the City began to purchase parcels within this Urban Renewal Area and later brought condemnation proceedings in the Circuit Court of Cook County to acquire additional parcels there. Plaintiff was named a defendant in a condemnation suit after refusing to sell her property to the City. In that litigation, she denied that the area was slum and blighted, that the City had a right to take it, and that the taking was for a public purpose. Judgment was entered for the City after a jury trial, resulting in a $40,750 award for Miss Blankner. She lost her appeal in

the Supreme Court of Illinois (50 Ill.2d 69, 277 N.E. 2d 129 (1971)), and her petition for certiorari was subsequently denied. 408 U.S. 931. The condemnation of plaintiff's apartment house was allegedly obtained through false and fraudulent information supplied by the City, thus causing plaintiff's property to be appropriated for a private purpose.

In Count I, plaintiff requested declaratory and injunctive relief, including the invalidation of the condemnation judgment of the Circuit Court of Cook County. She also requested $250,000 in compensatory damages and $250,000 in punitive damages, plus attorney's fees.

Count II was brought as a class action. The members of the class were described as "all property owners of the State of Illinois who are subject to having their property condemned for the purposes of urban renewal, without being afforded a fair hearing." The gravamen of Count II was that the Illinois Urban Renewal Consolidation Act, as interpreted by the Illinois courts, violated the equal protection and due process clauses of the Fourteenth Amendment. In Count II, plaintiff alleged that neither she nor any other property owner in this Urban Renewal Area (except the University of Chicago) was given notice or an opportunity for a hearing until after an October 8, 1964, Resolution of the Chicago Department of Urban Renewal concerning this area and the City Council's November 16, 1964, ordinance adopting that resolution and approving the acquisition of this Urban Renewal Area pursuant to the Illinois Act. Plaintiff claimed that the Act unconstitutionally allowed the City of Chicago to establish the fact of slum and blight by the introduction of the resolution and ordinance. This count also alleges that the definition of "slum and blighted area" (§ 91.103 (i)) is impermissibly vague, and that the Department of Urban Renewal is permitted to determine whether an area is slum and blighted despite its own pecuniary interest in the outcome.

Count III was also brought as a class action and noted that unlike "conservation area" property owners, property owners living in a purported slum and blighted area are not afforded notice and a public hearing before their

area can be designated for a renewal project. This was alleged to violate the equal protection clause.

Count IV, also a class action count, asserted that the condemnation procedure adopted under the Act constituted a bill of attainder.

Under the last three counts, the plaintiff and the class requested the convening of a three-judge district court, a judicial determination permitting the action to proceed as a class action, a declaration that the Illinois Urban Renewal Consolidation Act violates the federal Constitution, and an injunction against the taking of property under the slum and blighted area provisions of the statute.

Conspiracy Count

The district court held that the questions of law presented by the conspiracy count's allegation of unfair condemnation procedures were resolved against plaintiff in the state court proceedings. As more fully explained in the discussion of Count II, we agree.

Count I also alleged that defendants falsely and fraudulently caused the area in question to be designated a slum and blighted area. The fraud allegations are not merely conclusory; plaintiff alleges facts which suggest she would have had a strong case had she attempted to prove it in the state condemnation proceeding. Inexplicably, she declined to present any evidence there, so that this claim is also barred.

An essential element of plaintiff's fraud claim is that this Urban Renewal Area was not slum and blighted. If it were in fact slum and blighted, the defendants' motives in designating it for renewal would be irrelevant. *Green Street Assn. v. Daley*, 373 F.2d 1, 6 (7th Cir. 1967), certiorari denied, 387 U.S. 932. Similarly, the conclusions of the report relied on by the condemnation court would be true, and the renewal project could proceed despite any fraudulent supporting statements. Plaintiff had an opportunity to litigate the slum and blight issue in the condemnation proceeding, but she deliberately bypassed it. See *City of Chicago v. Walker*,

50 Ill. 2d 69, 70-71, 277 N.E.2d 129 (1971); *City of Chicago v. Barnes*, 30 Ill. 2d 255, 257-258, 195 N.E.2d 629 (1964); *City of Chicago v. Zwick*, 27 Ill. 2d 128, 188 N.E.2d 489 (1963); *Ross v. Chicago Land Clearance Comm'n*, 413 Ill. 377, 380-381, 108 N.E.2d 776 (1952); *Zurn v. City of Chicago*, 389 Ill. 114, 129-133, 59 N.E.2d 18 (1945); cf. *Deerfield Park Dist. v. Progress Development Corp.*, 22 Ill. 2d 132, 138-141, 174 N.E.2d 850 (1961).

If that proceeding were infected by fraud, plaintiff may or may not have a remedy. It is clear, however, that any remedy lies not in federal court, but in a state court petition for relief from judgment under Ill. Rev. Stats. 1973, ch. 110, § 72.

Plaintiff also argues that the fraud was only revealed by newly discovered evidence. That claim is also properly raised, if at all, in a state court petition under § 72. We note, however, that the fraud charges were based in part upon separate studies of the South Campus area, published in 1962 and 1964. Parts of each study are attached to the complaint as Exhibits B and C respectively. The complaint also relies on an article by Julian Levi which appears to have been published in 1962, although that is not clear from the record, and on a map attached to the City's federal grant application in 1965. These items were complaint Exhibits A and D. At the very least, Exhibits B and C were public and could have been presented at the 1968 condemnation trial.

Also, in the condemnation proceeding, plaintiff had the opportunity to prove that her property was being taken for a private purpose but did not attempt to do so. This issue was raised by *amici curiae*, and the Illinois Supreme Court reiterated that the taking of land for the redevelopment of slum and blighted areas was for a public purpose. 50 Ill. 2d at 71. Thus relitigation of this ground is barred too.

In this Count, plaintiff additionally asserts that the two federal defendant officials had an obligation to inspect the Urban Renewal Area before making federal funds available to Chicago and its Department of Urban

Renewal. However, 42 U.S.C. §§ 1451 (c) and (e) and 1460 (c), the provisions relied upon, placed no such duty upon the federal defendants. In any event, since the condemnation proceedings finally determined whether this Urban Renewal Area was a slum and blighted area, the doctrine of collateral estoppel bars plaintiff's claim against the federal defendants.

Plaintiff relies on *Kauffman v. Moss*, 420 F.2d 1270 (3d Cir. 1970), for the proposition that collateral estoppel does not bar a civil rights suit alleging that false evidence was introduced in a state trial. Kauffman alleged that his criminal conviction had been procured by the perjury of policemen who testified against him. The case would not be directly in point, for it is much easier to attack collaterally a criminal conviction than a civil judgment, as the law of habeas corpus makes clear. But see *Goss v. Illinois*, 312 F.2d 257 (7th Cir. 1963); *Thistlethwaite v. City of New York*, 497 F.2d 339 (2d Cir. 1974). Equally important, the court in *Kauffman* stated that the complaint would be barred by collateral estoppel if the veracity of the witnesses named as defendants had been clearly put in issue and decided at the criminal trial; it held only that it was impossible to determine this issue on motion to dismiss. 420 F.2d at 1274-1275. Accord, *Mastracchio v. Rici*, 498 F.2d 1257 (1st Cir. 1974); cf. *Travelers Indemnity Co. v. Walburn*, 378 F. Supp. 860, (D.D.C. 1974); *Lovely v. Laliberte*, 498 F.2d 1261, (1st Cir. 1974).

Arguable Exceptions to Collateral Estoppel

Plaintiff argues that even if she is technically barred by prior litigation, the public interest requires that her case be decided on the merits. See *Mercoid Corp. v. Mid-Continent Investment Co.*, 320 U.S. 661, 669-672; *Gold v. DiCarlo*, 235 F.Supp. 817, 820 (S.D.N.Y. 1964), affirmed, 380 U.S. 520; *Spilker v. Hankin*, 188 F.2d 35 (D.C. Cir. 1951). Each of these cases involved unusual facts not present here; together, they indicate a narrow exception to a generally applicable doctrine. In this case, the public interest requires that collateral estoppel be given its full scope.

As Judge Swygert observed in *Green Street Assn. v. Daley*, 373 F.2d 1, 6-7 (7th Cir. 1967), certiorari denied, 387 U.S. 932, "the subjective reasons of the legislative authority seeking the acquisition is an 'inappropriate area for judicial inquiry.'" He added, quoting *Baber v. Texas Utility Co.*, 338 F.2d 665, 666 (5th Cir. 1956), "the state courts are as firmly bound by the Constitution of the United States as is this [federal] court and [the proper] forum for the enforcement of any constitutional rights that may have been violated is in the * * * state courts with the right of ultimate determination by the Supreme Court of the United States." (Modifications in *Green Street.)* We adhere to the rule in *Green Street* that cases like this presenting challenges to urban renewal programs are to be decided in the state court condemnation proceedings "if the taking is ostensibly for a public purpose, even though violations of federally guaranteed rights are claimed." See also *Harrison-Halsted Community Group, Inc. v. Housing & Home Finance Agency*, 310 F.2d 99, 103, 106 (7th Cir. 1962), certiorari denied, 373 U.S. 914.

Counts Attacking Constitutionality of Illinois Urban Renewal Act

As already noted, Counts II-IV attack the constitutionality of the Illinois Urban Renewal Consolidation Act of 1961. These issues were litigated or could have been litigated in the state court, the proper forum. See *City of Chicago v. Walker*, 50 Ill. 2d 69, 71, 277 N.E.2d 129 (1971); *City of Chicago v. Barnes*, 30 Ill. 2d 255, 257, 195 N.E.2d 629 (1964); *City of Chicago v. Zwick*, 27 Ill. 2d 128, 130-131, 188 N.E.2d 489 (1963); *Chicago Land Clearance Comm'n v. Quinn*, 11 Ill. 2d 111, 113, 142 N.E.2d 60 (1957); *Ross v. Chicago Land Clearance Comm'n*, 413 Ill. 377, 380, 108 N.E.2d 776 (1952); *Zurn v. City of Chicago*, 389 Ill. 114, 129-133, 59 N.E.2d 18 (1945). Therefore, the doctrine of *res judicata* bars plaintiff from raising the unconstitutionality of the Act against the same defendants or those in privity with them. *Grubb v. Public Utilities Commission*, 281 U.S. 470. As to the other defendants, plaintiff is barred by the related doctrine of collateral estoppel.

Foster v. City of Detroit, Michigan, 405 F.2d 138 (6th Cir. 1968), does not help plaintiff. There the Fosters were awarded $5,200 for their land in a condemnation suit begun after the federal suit was pending. The $5,-200 did not purport to compensate for the deterioration in value caused by the ten-year pendency of an ultimately discontinued previous condemnation suit. No comparable separable issue has been raised in this case.

One other case relied on by plaintiff and deserving mention is *Starks v. Klopfer*, 468 F.2d 796 (7th Cir. 1972). There the Court ordered that plaintiffs' challenge to an Illinois statute be heard by a three-judge district court. The parties had previously litigated the constitutionality of the same statute in the state court, but while the federal appeal was pending, the state Supreme Court withdrew its opinion and again took the case under advisement. The cases are divided as to whether a judgment has *res judicata* effect despite the pendency of a direct appeal, but we need not decide that question to distinguish *Starks*. *Res judicata* and estoppel are affirmative defenses which must be specifically raised. The defendant in *Starks* filed no brief in this Court, and the opinion did not refer to *res judicata* or collateral estoppel. We think it clear that the question was not presented to the Court and that it was not decided. Cf. *Edelman v. Jordan*, 415 U.S. 651, 670-671.

As noted, Counts II-IV were brought as a class action on behalf of "all property owners" subject to having their property condemned under the Illinois Urban Renewal Consolidation Act. We may assume *arguendo* that plaintiff's membership in the class she purports to represent has not been terminated by the condemnation judgment. Even so, it is clear that most members of the class of property owners described have not already fully litigated a condemnation proceeding in the state courts. Since the *res judicata* and collateral estoppel issues which have dominated this litigation are unique to Miss Blankner, she is not a proper class representative. See *Koos v. First Nat'l Bank of Peoria*, 496 F.2d 1162, 1164-1165 (7th Cir. 1974).

Failure to Convene Three-Judge Court

The district judge refused to request the convening of a three-judge court to consider the merits of Counts II-IV. Noting that the Urban Renewal Consolidation Act applies only to Illinois "urban communities * * * with more than 500,000 inhabitants * * *," and thus only to the City of Chicago, he held a three-judge court to be improper under *Board of Regents v. New Left Education Project*, 404 U.S. 541, and *Moody v. Flowers*, 387 U.S. 97. This disposition was correct, and we disagree with the contrary language in *Williams v. Osser*, 326 F.Supp. 1139, 1140-1141 (E.D.Pa. 1971). We of course have no occasion to pass on the alternative rationale in that case that the statute affected statewide elections.

We have considered the other points raised by plaintiff and the *amici curiae* and deem them without merit.

JUDGMENT AFFIRMED.

Nos. 73-1568,73-1569

SWYGERT, *Chief Judge*, concurring in part and dissenting in part.

The key point in the majority opinion is that there was a determination by the state court that the urban renewal area was slum and blighted; that the plaintiff had an opportunity to litigate this issue but deliberately bypassed it. It cannot be denied that if the area was not slum and blighted, the taking of plaintiff's property was for a private and not a public use. "The taking by a State of the private property of one person or corporation, without the owner's consent, for the private use of another is not due process of law, and is a violation of the Fourteenth Article of Amendment of the Constitution of the United States." *Missouri Pacific Railway v. Nebraska*, 164 U.S. 403, 417 (1896).

At the condemnation trial, the only evidence offered to show that the land was slum and blighted were the resolution of the Department of Urban Renewal and the ordinance of the City Council. Both referred to the condition of the land and buildings in late 1964.

Mrs. Blankner never received notice that her property was being taken for urban renewal until she received a letter in October 1967 from the city offering to purchase her property. It was another year before she had an opportunity to challenge the taking. By that time over four years had elapsed. She contends that the Department of Urban Renewal's designation of the land and buildings in the area as slum and blighted was a self-fulfilling prophecy. She makes the argument that as the city purchases property pursuant to the urban renewal plan, buildings become vacant and fall into a state of disrepair. The owners do not improve or even maintain their property in the face of imminent condemnation. No new construction is begun. Although an area may not have been slum and blighted at the time of the original designation, it becomes slum and blighted by the time of the condemnation proceedings. The federal defendants concede this point in their brief when they state that "once a renewal plan is announced for an area, improvement and maintenance of property within the area usually cease almost completely and the area deteriorates."

"The usual rule has been '[w]here only property rights are involved, mere postponement of the judicial inquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate.' *Phillips v. Commissioner*, 283 U.S. 589, 596-97 (1931)." *Mitchell v. Grant*, ... U.S. ....., 42 U.S.L.W. 4671, 4675 (May 13, 1974). But here the postponement of that opportunity made the determination of liability inadequate. This was not the usual condemnation case where it can be determined after a public project is formulated whether the taking was proper. In the instant case the public purpose for which the land was taken—the elimination of a slum and blighted area—could never be tested in the condemnation action as the Due Process Clause requires since the adoption of the resolution and the ordinance foreclosed any later meaningful challenge.

Even if a challenge to the taking were permissible in the state condemnation proceeding, Mrs. Blankner could not have presented evidence of the condition of the area at the time it was determined to be slum and blighted since she alleges that the area had deteriorated by the time of the trial. Moreover, it would be unfair to place the burden on her to show the condition of two hundred sixty-six buildings over four years prior to the trial and three years prior to notice from the city that the area had been designated as slum and blighted and was to be condemned under urban renewal. The Fourteenth Amendment guarantees that a person shall not be deprived of property without due process of law.

> "[T]he Constitution does require . . . 'an *opportunity* . . . granted at a meaningful time and in a meaningful manner.' *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (emphasis added), 'for [a] hearing appropriate to the nature of the case,' *Mullane v. Central Hanover Tr. Co., supra*, at 313. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. That the hearing required by due process is subject to waiver, and is not fixed in form

> does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. In short, 'within the limits of practicability,' *id.*, at 318, a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause." *Boddie v. Connecticut*, 401 U.S. 371, 378-79 (1970).

The purported opportunity afforded Mrs. Blankner to litigate the propriety of the taking of her land in the state court was merely a mirage; the opportunity disappeared before she was ever required to respond in the condemnation proceeding. Since she was not afforded a meaningful opportunity to contest the designation and taking, she has a right of action under 42 U.S.C. § 1983 for deprivation of her property without due process of law.

The plaintiff alleges that beginning in 1959 and continuing to the present the defendants conspired under color of law to deprive her and others of their property without due process. She asserts that the area in question was characterized by the defendants fraudulently and falsely as slum and blighted and that their concerted conspiratorial action denied her and the other owners of their consititutional right to due process. These allegations constitute a classic section 1983 cause of action. In my judgment there was no way that her asserted claim could have been incorporated in the condemnation proceeding. I would reverse the dismissal of Count I except as to the federal defendants.

For the reasons stated, I would also reverse Count II and remand with directions that a three-judge court be convened to decide whether the judicial review provided by the Illinois Consolidated Urban Renewal Act violates the Due Process Clause in that it fails to provide notice and a meaningful hearing in which to challenge the determination that the land is slum and blighted. Since I would reverse the dismissal of Count II as not being

barred by res judicata, I would allow that part of the case to proceed as a class action except as to the federal defendants who I agree should be dismissed.

I concur in the affirmance of the dismissal of Count III since there was no suspect class alleged *(see Goldstein v. City of Chicago,* No. 72-1965 (7th Cir., July 12, 1974)).

I also concur in the affirmance of Count IV.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

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APPENDIX D
COMPLAINT FOR INJUNCTION
AND OTHER RELIEF

Plaintiff submits the following Complaint against Defendants named above:

COUNT I

JURISDICTION AND VENUE

1. This action arises under the provisions of 42 U.S.C. Sections 1983, 1985 (3), 1986, and 1988, and the First, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution. Plaintiff invokes this Court's jurisdiction under the provisions of 28 U.S.C. Sections 1343 and 1331. Defendants performed the acts alleged in this Count within the Northern District of Illinois, Eastern Division and Plaintiff's claims arose therein.

THE PLAINTIFF

2. Plaintiff FREDERIKA BLANKNER, a retired spinster teacher, 71 years old, is and was at all times alleged herein, a citizen of the United States and the fee simple owner of improved real property commonly known as 6043-45 South Woodlawn Avenue, Chicago, Illinois, which property is situated in an area designated as the 60th-Cottage Grove Slum and Blighted Area Redevelopment Project on Chicago's South Side (the Urban Renewal Area), adjacent to the University of Chicago. Plaintiff's building is still standing, is in good condition, is occupied by tenants, and is being operated and maintained by BLANKNER. Outside of an extremely modest pension, the building is BLANKNER'S sole source of support. It has been owned and operated by her or her parents since 1922.

THE URBAN RENEWAL AREA AND SOUTH CAMPUS

3. The 60th-Cottage Grove Slum and Blighted Area Redevelopment Project (hereinafter "Urban Renewal Area") consists of approximately 105.6

acres, and is bounded generally as follows: on the north, by East 60th Street, on the east by Stony Island, on the south by 61st and 63rd Streets, and on the west by Langley and Evans Avenues and an alley West of Cottage Grove Avenue.

4. Part of the Urban Renewal Area is an area regularly referred to by the University of Chicago as its "South Campus" and is bounded by 60th and 61st Streets and Cottage Grove on the west and Stony Island Avenue on the east (hereinafter "South Campus"). Plaintiff's property is situated within South Campus.

THE DEFENDANTS

5. (a) Defendant, CITY OF CHICAGO, (hereinafter "CITY") is a municipal corporation organized and existing by virtue of the laws of the State of Illinois. Among other things, the CITY is responsible for approving and implementing urban renewal projects within the CITY.

(b) Defendant, RICHARD J. DALEY, (hereinafter "DALEY") is Mayor of the CITY and, as such, is its Chief Executive Officer.

(c) Defendant, CITY COUNCIL OF THE CITY OF CHICAGO, (hereinafter "COUNCIL"), is composed of Alderman representing the fifty wards of the CITY. The COUNCIL constitutes the corporate authority of the CITY and is the legislative and administrative body of the city government.

(d) Defendant, RICHARD L. CURRY, (hereinafter "CURRY"), is the Corporation Counsel of the CITY and represents the CITY in enforcement of the laws of the United States, the State of Illinois, and ordinances of the CITY.

(e) Defendant, DEPARTMENT OF URBAN RENEWAL OF THE CITY OF CHICAGO (hereinafter "DUR") is the agency of the CITY organized under the

Urban Renewal Consolidation Act of 1961, as amended, (Illinois Revised Statutes, Chapter 67-1/2, Section 91.101 et seq.) to develop plans and carry out projects intended to eradicate and redevelop slums and blighted areas and to conserve urban residential areas within the CITY.

(f) Defendant LEWIS W. HILL (hereinafter "HILL"), is the Chief Executive Officer of DUR.

(g) Defendant, UNIVERSITY OF CHICAGO (hereinafter "UNIVERSITY"), is a corporation organized and existing by virtue of the laws of the State of Illinois, and is a private, non-denominational, co-educational institution of higher learning and research located on the South Side of the City of Chicago, occupying approximately 165 acres, some of it being in the so-called Urban Renewal Area.

(h) Defendant, EDWARD H. LEVI, is President of the UNIVERSITY.

(i) Defendant, JULIAN H. LEVI, was at all times alleged herein a member of the faculty of UNIVERSITY, Executive Director of the South East Chicago Commission and a duly authorized agent acting for and on behalf of UNIVERSITY.

(j) Defendant SOUTH EAST CHICAGO COMMISSION (hereinafter "SOUTH EAST COMMISSION"), an organization funded and established by UNIVERSITY, at all times herein worked to secure for UNIVERSITY the certain land known as South Campus and at all times acted as agent of UNIVERSITY.

(k) Defendant, BOARD OF TRUSTEES OF THE UNIVERSITY OF CHICAGO (hereinafter "BOARD"), is the governing body of UNIVERSITY and is responsible for the approval of actions taken by UNIVERSITY. The Defendants, GAYLORD DONNELLEY, BEN W. HEINEMAN, ROBERT P. GWINN, and WALTER V. LEEN are officers of the BOARD.

(l) Defendant, GEORGE W. ROMNEY, (hereinafter "ROMNEY"), is Secretary of the United States Department of Housing and Urban Development (hereinafter "HUD") and, as such, has the power to approve and finance urban renewal projects pursuant to the National Housing Act of 1949, as amended, Title 42 U.S.C. Section 1441, et seq.

(m) Defendant, JOHN WANER (hereinafter "WANER"), is the duly appointed acting Area Administrator of HUD for the area encompassing the City of Chicago and, as such, is directly responsible for the administration of federal participation in slum clearance and urban renewal projects under the supervision of CITY and DUR.

THE CONSPIRACY AND CIVIL WRONGS

6. South Campus consists of approximately 66 acres of land immediately adjacent to the main campus area of UNIVERSITY. Prior to 1960 and going back for a period of over 50 years, UNIVERSITY had acquired title to approximately 60% of the land in South Campus and much of this land, especially in the area bordering on 60th Street, was improved with many new and modern University buildings such as the University of Chicago Law School. Beginning at a date sometime prior to 1960 UNIVERSITY was desirous of acquiring the balance of the land in South Campus for further expansion and development of its total UNIVERSITY facilities.

7. In 1959, the United States Congress passed Section 112 of the National Housing Act of 1949, as amended, (42 U.S.C. Sec. 1643 et seq.) which provides that where a University or other approved institution purchases land through urban renewal from a municipality and devotes the land to certain institutional uses compatible with an urban renewal plan, then under a Federal matching grant formula, $2.00 of credit are available to the municipality for every $1.00 of credit generated by the redevelopment plan of the University. The credits available to a municipality can be used to finance unrelated

urban renewal projects throughout the municipality.

8. Beginning at a date unknown to Plaintiff, but at approximately January 1, 1959 and continuing until the present, Defendants, for the purpose of denying Plaintiff and other persons residing and owning property in the Urban Renewal Area of their constitutional, civil and statutory rights through fraud and deceit, embarked on a plan to deprive said persons of their property without due process of law. In carrying out their plan, Defendants acted under color of the laws of the United States and of the State of Illinois including but not limited to the matching grant formula of the National Housing Act of 1949, as amended, (42 U.S.C. Sec. 1463) and the Illinois Urban Renewal Consolidating Act of 1961, as amended, (Illinois Revised Statute (1963) C. 67-1/2, Sec. 91.101 et seq.).

9. Beginning at a date unknown to Plaintiff, but at approximately January 1, 1959, and continuing until the present, Defendants, for the purpose of denying Plaintiff and other persons residing and owning property in the Urban Renewal Area of their constitutional, civil, and statutory rights, conspired together to:

(a) Fraudulently and falsely cause the Urban Renewal Area to be declared a slum and blighted area within the meaning of the Illinois Urban Renewal Statutes, in order to accomplish the following objectives.

(b) Permit UNIVERSITY to purchase the land in South Campus from the CITY at a cost far less than UNIVERSITY would have had to pay on the open market after the CITY had condemned, acquired title to, and destroyed the structures on the 26.5 acres of South Campus not owned by the UNIVERSITY.

(c) Permit CITY to acquire over $14 Million of Federal Urban Renewal funds and credits for use in any of its Urban Renewal projects throughout the CITY through sale of

South Campus to UNIVERSITY.

10. In carrying out their wrongful course of conduct, the Defendants performed the following acts.

(a) On July 18, 1960, Defendant, UNIVERSITY, through its officers and agents formally presented their South Campus proposal to Defendant CITY and falsely alleged that the 26.5 acres which were not owned by the UNIVERSITY in South Campus were characterized by widespread decay and deterioration. Prior to that meeting, said plan had been informally presented to the MAYOR and other city officials by officers and agents of UNIVERSITY. At said meetings, UNIVERSITY and its officers and agents further noted that an Urban Renewal Project in South Campus could generate approximately $21,000,000 of Federal Urban Renewal Credits under Section 112 of the 1949 National Housing Act and, after costs of approximately $6.5 Million, there would be available to CITY funds or credits of $14 Million for use in support of other renewal and housing programs as the CITY, MAYOR and COUNCIL might determine. Portions of an article by JULIAN LEVI explaining this meeting are attached hereto as Exhibit A.

(b) In January, 1961, CITY, through its agent Chicago Land Clearance Commission, predecessor to DUR, together with numerous federal and CITY agencies, made a "survey" of the buildings in the total Woodlawn area (60th to 67th Streets, Cottage Grove to Stony Island) and undertook to prepare a total Woodlawn Plan. The study was published in 1962 and based upon 1960 federal census figures showed that South Campus had overall a very small percentage of housing units that were dilapidated and deteriorating, whereas other portions of Woodlawn not adjacent to UNIVERSITY or within the so-called South Campus area were shown to be in a serious state of dilapidation and decay. Portions of the study are attached hereto as Exhibit B.

(c) After publication of the 1962 study, Defendant DUR undertook a new study by its own staff members, the results of which were published on October 1, 1964. Said October 1, 1964 Report consists of a generalized statistical compilation of alleged characteristics of the area without setting forth any criteria defining said characteristics. In addition, the Report,

(i) does not indicate which individual structures within the area contain the alleged statutory deficiencies;

(ii) does not allege or indicate which structures, if any, contain violations of the Building Code of the City of Chicago;

(iii) does not include data about the institutional holdings of UNIVERSITY within the purported Urban Renewal Area or the fact that South Campus was to be resold to the UNIVERSITY. (Rather the report makes the misleading understatement that "It is not anticipated that there would be any problems marketing the land in the area.")

The Report for the first time defined the purported Urban Renewal Area which includes South Campus and determined that the purported Urban Renewal Area was a slum and blighted area as defined in Section 91.103 (i) of the Illinois Urban Renewal Consolidation Act of 1961, as amended, which provides as follows:

"Slum and Blighted Area means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilipation, obsolescense, over-crowding, faulty arrangement or design, lack of ventilation,

light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors are detrimental to public safety, morals or welfare."

Said report was prepared and findings and recommendations made without notice to Plaintiff or other property owners in the Urban Renewal Area and without affording plaintiff or other property owners a hearing. A copy of that report is attached hereto as Exhibit C.

(d) On October 8, 1964, in accordance with the false and misleading Report of the DUR staff, DUR adopted a resolution determining the Urban Renewal Area to be slum and blighted as defined in the Illinois Statutes, and recommending its acquisition pursuant to the provisions of the Illinois Urban Renewal Consolidation Act.

(e) On November 16, 1964 COUNCIL passed an Ordinance adopting the DUR Resolution and approving acquisition of the area for slum clearance and redevelopment.

(f) At no time were the Plaintiff or property owners in the purported Urban Renewal Area given actual notice of the findings, determinations or actions taken by DUR and COUNCIL or asked to appear and be heard before either public body.

(g) During the period 1960 to 1964, UNIVERSITY developed its South Campus Redevelopment Plan and on information and belief (at or about 1962 or 1963) CITY and UNIVERSITY through their officers and agents agreed and planned that if CITY condemned and acquired the South Campus property in the Urban Renewal Area the UNIVERSITY would purchase that property and develop it in accordance with its Redevelopment Plan.

(h) On October 15, 1965, CITY submitted an application to the Housing and Home Finance Agency (presently subsumed by HUD) for a loan and grant totalling $12,657,353 to defray the cost of acquisition of parcels within the Urban Renewal Area. Said application was later approved.

(i) Attached to said application was a map, dated September, 1966, showing particular slum and blighted designations for each building in the Urban Renewal Area, many of which designations were knowingly false and inaccurate, including the following:

(1) a number of the buildings designated as "structurally substandard to a degree requiring clearance" were buildings owned by UNIVERSITY, which are still standing and in use today;

(2) other buildings owned by UNIVERSITY were designated "deteriorating because of a defect not correctable by normal maintenance, or extensive minor defects taken collectively causing the building to have a deteriorating effect on the surrounding area, or inadequate original construction or alteration, or inadequate or unsafe plumbing, heating, or electrical facilities, or other equally significant building deficiencies". A number of these buildings are also still standing and in use today.

(3) a number of other buildings including the one owned by Plaintiff were also designated "structurally substandard to a degree requiring clearance", or said to have other characteristics of slum and blight.

(4) other buildings were designated as both "structurally substandard to a degree requiring clearance" and also "not to be acquired".

A copy of said map is attached hereto as Exhibit D.

(j) On November 11, 1966, COUNCIL adopted a Development Plan for the Urban Renewal Area which

included the sale by CITY to UNIVERSITY of South Campus; just prior to such adoption UNIVERSITY signed the certification agreement necessary for CITY to obtain Federal Funding for the project from HUD.

(k) In 1967, acting under authority of State law, custom and usage, CITY began to acquire parcels within the Urban Renewal Area first through urban renewal purchase, then under condemnation proceedings by a Petition to Condemn filed in the Circuit Court of Cook County, County Department, Law Division, Case No. 68 L 4969.

(l) Plaintiff BLANKNER was named defendant in said Condemnation Suit. She appeared through counsel and filed a Motion to Dismiss the Petition and a Traverse, challenging the conclusion that the area was slum and blighted, the right of the CITY to acquire her property by the exercise of the power of eminent domain, and that the taking was for a public purpose. At hearing on the Traverse, CITY introduced into evidence a certified copy of the DUR resolution of October 8, 1964, and the ordinance of COUNCIL of November 16, 1964, adopted in reliance on the DUR resolution as prima facie evidence of the right of the CITY to acquire the properties within the urban renewal area, including the property of Plaintiff, by eminent domain. Based upon said evidence, the Court entered an order in effect denying the Traverse. An appeal from the denial was taken to the Illinois Supreme Court but that Court dismissed the appeal finding the order on the Traverse was not a final appealable order. Thereafter, Plaintiff submitted to an ex parte jury trial at which Plaintiff presented no evidence concerning value of her property and an award was made and judgment order entered on February 25, 1969. Plaintiff appealed to the Supreme Court of Illinois, which court rendered an opinion adverse to Plaintiff reported at 50 Ill. 2d 69, 277 N.E. 2d, 129 (1971).

Plaintiff filed a Petition for Writ of Certiorari in the United States Supreme Court, which Petition was denied on June 26, 1972. During the pendency of the appeals, Plaintiff has maintained possession and control of the property by order of the Illinois Supreme Court entered on May 27, 1969. The mandate of the Illinois Supreme Court, stayed pending determination by the United States Supreme Court on the Petition for Writ of Certiorari, finally issued on July 12, 1972, directed to the Clerk of the Circuit Court of Cook County, Illinois.

11. To accomplish the purposes of said conspiracy to acquire South Campus for UNIVERSITY and federal matching funds for CITY, CITY, DUR, and HILL acting in concert and by agreement with UNIVERSITY, its officers and agents, JULIAN LEVI, SOUTH EAST COMMISSION and other illegally and unconstitutionally deprived Plaintiff of her property without due process of law by falsely and fradulently causing the area to be designated a slum and blighted area requiring clearance. In furtherance thereof said Defendants:

(a) Caused the 1964 DUR Report to be published and acted upon, knowing the fact to be that the data compiled therein did not accurately reflect the condition of the purported Urban Renewal Area, and that said area, as indicated by the previous 1962 study, in fact, was not slum and blighted.

(b) Had full knowledge that the Urban Renewal Area was not in fact a slum and blighted area, but acted in concert to deceive COUNCIL and to induce it to adopt the ordinance of November 16, 1964.

(c) Caused false characterization and designations to be placed alongside the buildings shown on the map of September, 1965, submitted by DUR to HUD on October 15, 1965; said false designations and characterizations included:

(1) designation of Plaintiff's building as "structurally substandard to a degree requiring clearance" when in fact Plaintiff's building was declared by W. W. Vincent & Co. in September, 1963, to be in good condition and to have an insurable value of $111,000; was considered sufficient security for a $45,000 mortgage loan by Talman Federal Savings & Loan Association to Plaintiff on August 9, 1962; was found by the City Department of Buildings after inspection to be a legal use, without violations of either the Building, Housing, Plumbing, or Zoning Codes of CITY on June 2, 1966;

(2) designation of 16 townhouses at 1430-44 and 1433-45 E. 60th Place (known as Plaisance Court) as having the characteristics of slum and blight requiring clearance when, in fact, said buildings were in reasonably good condition and repair, as stated by HILL to the owners thereof, and the same have been and continue to be operated by DUR, are still occupied by tenants, and DUR has made application to HUD to permit the buildings to remain standing and be returned to the UNIVERSITY for rehabilitation in apparent violation of the Redevelopment Plan;

(3) designation of approximately 16 buildings owned by UNIVERSITY as having characteristics of slum and blight requiring clearance (5 of these buildings were designated "structurally unsound to a degree requiring clearance"); all of these buildings are standing and in use today and UNIVERSITY has publicly stated that they will not be demolished; in fact all of these

buildings were and are in good condition and repair and did not have the alleged characteristics of slum and blight requiring clearance;

(4) designation of other structures now demolished within the Urban Renewal Area, and more particularly in South Campus, as having characteristics of slum and blight requiring clearance when in fact these structures did not have said characteristics and were not eligible for clearance.

12. Said characterizations and designations were necessary in order to qualify the purported Urban Renewal Area as a slum and blighted area under the Illinois Urban Renewal Consolidation Act of 1961 and as a slum clearance area for purposes of funding by HUD under the National Housing Act of 1949, but said characterizations were false.

13. The alleged legal right of the CITY to acquire the property of Plaintiff within the purported Urban Renewal Area through the exercise of the power of eminent domain was procured through fraudulent misrepresentation of facts to the Circuit Court of Cook County, Illinois, in Case No. 68 L 4696, and the Judgment and Order of that Court relative to the right of the CITY to condemn Plaintiff's property is null and void. Plaintiff did not have knowledge of the fraudulent nature of the designation and characterizations made by CITY and DUR concerning the Urban Renewal Area prior to disposition of her cause by the Circuit Court of Cook County, Illinois, in Case No. 68 L 4696.

14. Notwithstanding their obligations under federal statutes and laws, ROMNEY and WANER failed to make or cause to be made the necessary inspections of the purported Urban Renewal Area to determine if it satisfied federal requirements and eligibility for funding with respect to slum clearance areas but instead relied upon

the false and fraudulent information, maps and data supplied to it by Defendants.

15. As a result of the above federal funds have been improperly and illegally granted to CITY and DUR in violation of the laws of the United States of America, the precise amount being unknown to Plaintiff.

16. The Defendants, DUR, CITY, COUNCIL, and HILL conspiring with UNIVERSITY, its officers and agents, JULIAN LEVI and SOUTH EAST COMMISSION, have denied to Plaintiff and other property owners in the Urban Renewal Area their civil and constitutional rights secured and guaranteed to them by the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution by illegally and wrongfully appropriating their property for a private purpose through fraudulent exercise of the power of eminent domain and without due process of law. Plaintiff has and will therefore, be irreparably harmed and injured by the continuing actions of Defendants to accomplish and culminate their conspiracy, which injury and harm cannot be adequately or completely recompensed by monetary damages.

17. Plaintiff, herself, will suffer immediate and irreparable harm unless this Court issues its temporary preliminary and permanent injunction enjoining CITY, its officers, agents, and persons acting in concert with them from executing on the final judgment of the Circuit Court of Cook County and seizing control of Plaintiff's property and demolishing it under CITY'S power of eminent domain. CITY and other Defendants will suffer no harm if Plaintiff is allowed to stay in possession and control of her property pending the resolution of the issues of this law suit.

WHEREFORE, Plaintiff prays that this Court:

A. Declare the acquisition of Plaintiff's property by the CITY to be illegal, unconstitutional and void.

B. Declare the CITY, DUR, HILL, JULIAN LEVI, UNIVERSITY, and others presently unknown to Plaintiffs, illegally and unconstitutionally conspired to fraudulently deprive the Plaintiff of her property in violation of her civil and constitutional rights and without due process of law.

C. Declare that the CITY and DUR through fraudulent and illegal misrepresentations obtained federal funding for the 60th-Cottage Grove Redevelopment Area.

D. Issue its temporary restraining order and preliminary injunction, and after a full hearing, permanently enjoin the CITY, MAYOR, CITY COUNCIL, DUR, HILL, CURRY, and others presently unknown to Plaintiff, from taking any action to deprive Plaintiff from exclusive and sole possession, use and enjoyment of her property, and further, to enjoin said defendants from in any manner attempting to demolish her property or interfere in any way with her right of the ownership of said property.

E. Declare that the Judgment and Order of the Circuit Court of Cook County, Illinois, in Case No. 68 L 4969, involving the property of Plaintiff to be null and void, and that FREDERIKA BLANKNER be declared to be the fee simple owner of the property commonly known as 6043-45 South Woodlawn, Chicago, Illinois, free of any and all liens and encumbrances which may have attached to the property by reason of the actions of the CITY to acquire it.

F. Issue its temporary restraining order and its preliminary injunction, and after a full hearing enjoin the CITY, CURRY, their agents and servants and any one acting in concert with them from executing on its Judgment in Case No. 68 L 4969.

G. Declare the actions of the CITY, DUR, HILL, and others presently unknown to Plaintiff to be in violation of the National Housing Act.

H. Issue its temporary restraining order and preliminary injunction and after a full hearing, permanently enjoin ROMNEY, WANER, and HUD from expending any funds in connection with the 60th-Cottage Grove Redevelopment Area, and further, ordering said Defendants to take such appropriate action as is necessary to seek reimbursement from the CITY for any federal funds heretofore expended in connection with the aforesaid project.

I. Enter Judgment in favor of Plaintiff, FREDERIKA BLANKER against CITY, COUNCIL, HILL, DUR, UNIVERSITY, SOUTH EAST COMMISSION, and JULIAN LEVI in the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00) as and for compensatory damages together with attorneys' fees and costs.

J. Enter Judgment for Plaintiff FREDERIKA BLANKNER against the CITY, DUR, HILL, UNIVERSITY, SOUTH EAST COMMISSION, and JULIAN LEVI in the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00) as and for punitive damages.

K. Allow Plaintiff attorneys fees, expenses, and Court Costs incurred herein.

L. For such other, further and additional relief as may seem just and equitable to this Court.

COUNT II

1. Plaintiff realleges the allegations of Paragraph 1 of Count 1.

This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. Secs. 2281, 2284 since Plaintiff seeks an injunction to restrain certain Defendants, some of whom are state officers, from the enforcement, operation and execution of a state Statute of state-wide applicability on the ground that said Statute is contrary to the Constitution of the United States.

2-17. Plaintiff realleges the allegations of Paragraphs 2 through 17 of Count 1.

18. Defendant, RICHARD B. OGILVIE, is the Governor and Chief Executive Authority of the State of Illinois. Defendant, WILLIAM SCOTT, is the Attorney General of the State of Illinois, and, as such, is primarily responsible for enforcement of the laws of the State of Illinois, including the Illinois Urban Renewal Consolidation Act of 1961, as amended (hereinafter the Illinois Act).

19. The named Plaintiff brings this action on her own behalf and, pursuant to Rule 23(a), (b) (2) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. The members of the class are all property owners of the State of Illinois who are subject to having their property condemned for the purposes of urban renewal, without being afforded a fair hearing.

The requirements of Rule 23 are met in that: the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative party are typical of the claims of the class; the representative party will fairly and adequately protect the interests of the class; and the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

20. In October 1967, Plaintiff received the first notice that her property was being condemned for urban renewal when she received a letter from the City offering her Thirty-Five Thousand Dollars ($35,000.00) for her property.

21. On April 1, 1968, CITY filed suit in the Circuit Court of Cook County, City of Chicago vs. Walker et al., 68 L 4969 to condemn the property of Plaintiff and certain members of Plain-

tiff Class on the ground that the property located within the urban renewal area, was slum and blighted as defined in the Illinois Act.

22. At trial, Plaintiff denied that the Urban Renewal Area was slum and blighted. The trial court found that under the Illinois Act (Chapter 67-1/2 Sec. 91.101 et seq. Ill. Rev. Stat. (1968) and the Illinois Eminent Domain Act (Ch. 47, Sec. 1 et seq. Ill. Rev. Stat. (1968) the CITY met its burden of proof by introducing into evidence a certified copy of the resolution of DUR of October 8, 1964, and a certified copy of the Ordinance of COUNCIL of November 16, 1964. BLANKNER argued that a prima facie case had not been made and that such a proceeding violated due process and equal protection of the law which arguments were rejected and judgment was entered for CITY. On appeal the Illinois Supreme Court in City of Chicago vs. Blankner, 50 Ill. 2nd 69, 277 N.E. 2d 129 (1971), affirmed the trial court. Petition to the United States Supreme Court for Writ of Certiorari was denied on June 26, 1972.

23. The Illinois Act does not afford property owners an opportunity for actual notice and hearing prior to condemnation proceedings themselves, which in this case commenced on April 1, 1968, almost four years after the initial fundamental and irrevocable decisions to take Plaintiff's property had been made by DUR and COUNCIL.

24. The Urban Renewal Area consists approximately of 105.6 acres made up of 266 structures with a total of 2,592 separate living units. At the time of the DUR resolution of October 8, 1964, and the COUNCIL Ordinance of November 16, 1964, Plaintiff had neither been given notice nor the opportunity of a hearing by any of the Defendants concerning the condition of her property or the condition and characteristics of the general Urban Renewal Area, nor is Plaintiff aware that any other member of the Plaintiff Class had been

given such notice, or opportunity for hearing. Had Plaintiff and members of Plaintiff Class been so notified and afforded such opportunity, Plaintiff and other members of Plaintiff Class could have appeared and opposed the findings and conclusions of the initial report of DUR, the resolution of DUR and the Ordinance of CITY. Plaintiff and other members of Plaintiff Class could have proved among other things:

(a) That Plaintiff's property was considered adequate security for a $45,000.00 mortgage loan from Talman Federal Savings & Loan Association on August 9, 1962.

(b) That Plaintiff's property was found by an insurance appraiser to have insurable value of $111,000.00 in September, 1963.

(c) That numerous other properties in the Urban Renewal Area were well maintained, did not have significant housing code violations, and had been owned and continued to be owned by long time residents of the area, and

(d) That the Urban Renewal Area in whole or in significant part did not have characteristics of slum and blight as is required prior to any action under the statute. In addition, had Plaintiff and other members of Plaintiff Class been afforded a hearing, they could have confronted the staff and decision making people at DUR and tried to establish precisely what the characteristics of slum and blight were as to each building or group of buildings and as to the area as a whole so as to adequately be able to respond, if possible, to specific findings of DUR and so as to more fully know what was the proof that they could be required to meet.

25. As a result of the 1964 DUR Report and Resolution and the Ordinances of COUNCIL, Plaintiff's property rights were directly and adversely affected and the value of her property extremely depreciated, all without

Plaintiff's knowledge. Illinois law does not afford an opportunity to Plaintiff to protect her rights at this stage of urban renewal proceedings. It was not until almost four years later in the actual condemnation hearing that Illinois law afforded Plaintiff the only opportunity to respond to the characterization of her property and neighborhood as being slum and blighted, at which time such opportunity was meaningless and the burdens of answering such charges insuperable.

26. On November 11, 1966, COUNCIL adopted an Ordinance approving a redevelopment plan for the Urban Renewal Area. Illinois law did not and does not afford Plaintiff or other members of Plaintiff Class an opportunity to challenge such findings and recommendations of the COUNCIL or the proceedings of DUR leading up to the recommendations of an Ordinance for adoption by the COUNCIL.

27. The definition of slum and blighted area contained in the Illinois statutes (Chap. 67-1/2, Sec. 91.103 (i), Ill. Rev. Stats.) is unconstitutionally vague and overbroad on its face and as applied and conclusory in its terms and provisions in that it fails to give Plaintiff or members of Plaintiff Class adequate notice of what standards Plaintiffs must meet to maintain their property or what specific condition of property would cause it to be subjected to the terms of the statute, so as to deny to Plaintiffs a fair opportunity to respond to allegations made in terms of the statute and to meet actions brought to enforce the operation of the statute against their property.

28. Illinois law, as interpreted and applied by the Illinois courts, unconstitutionally shifts the burden of proof to defendants in condmenation proceedings and allows CITY to establish the fact of slum and blight without direct and specific evidence, but rather by the introduction of resolutions and

ordinances of public bodies. Defendants therefore have no opportunity to cross-examine, to confront witnesses, or to be advised of the details of the charges made against them so that they do not know in what manner or by what proof they can meet the allegations and charges, and the attempt to do so by a property owner such as Plaintiff would be so unconscionable a burden as to violate every notion of due process of law.

29. DUR, the public body which under Illinois law is permitted to define an area as slum and blighted without notice or without affording a hearing to the property owners involved, can do so, and did in this case, even though it had a substantial pecuniary interest in the outcome of the proceedings, which interest was in conflict with the rights of Plaintiff.

30. Taken as whole, the Illinois Act as interpreted and enforced by Illinois Courts, effectively denies property owners of their property without due process of law and effectively amounts to condemnation without opportunity to defend of "condemnation without representation".

31. The Illinois procedure for determining an area to be slum and blighted without personal notice and without public hearings, and which places substantial burdens of proof on Defendants under an extremely vague and conclusory statute, substantially deprives Plaintiff and other members of Plaintiff Class of due process and equal protection of the law as guaranteed by the Fifth and Fourteenth Amendment to the United States Constitution.

COUNT III

1-30. Plaintiff realleges the allegations contained in Paragraphs 1 through 30 of Count II hereof.

31. The Illinois Act provides that before an area can be declared a conservation area by DUR, as defined by the statute, (Chap. 67-1/2, Sec. 91.121, Ill. Rev. Stat.) property owners must be afforded notice and a public hearing.

32. In light of the purposes of the Illinois Act, the provision that there be notice and hearing only to those property owners living in a conservation area is an arbitrary and invidious discrimination against property owners in a purported "slum and blighted" area thereby denying the equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution.

COUNT IV

1-30. Plaintiff realleges the allegations contained in Paragraphs 1 through 30 of Count III hereof.

31. Illinois condmenation procedure under the Illinois Act constitutes Bills of Attainder in violation of Article 1, Section 10 of the United States Constitution and the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, the Plaintiff and the Plaintiff Class pray that this Court:

A. Assume jurisdiction of this cause, convene a three-judge district court pursuant to 28 U.S.C. Secs. 2281 and 2284 to determine the controversy, and set this case down promptly for a hearing.

B. Determine by order pursuant to Rule 23(c) (1) of the Federal Rules of Procedure, that this action be maintained as a class action.

C. Pending a hearing and determination by the three-judge court, grant a temporary restraining order pursuant to 28 U.S.C. Secs. 2284 (3) restraining Defendants, their successors in office, and agents and employees and all other persons in active concert and participation with them, from causing irreparable harm to Plaintiff by taking title and/or possession of Plaintiff's property.

D. Enter a final judgment pursuant to 28 U.S.C. Secs. 2201 and 2202 and Rules 54, 57, and 58 of the Federal Rules of Procedure declaring the Illinois Urban Renewal Consolidation Act of 1961 as its pertains to Slum and Blighted Areas (chap. 67-1/2 §§ 91.109-119, and § 91.103 (i), to be invalid on the grounds that provisions of said act defining and setting forth procedures for designating and condemning slum and blighted areas for urban renewal purposes are violative of the provisions contained in the First, Fifth, and Fourteenth Amendments to the Constitution of the United States.

E. Enter a preliminary and permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining Defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them from taking title and/or possession of property in Illinois under the Slum and Blighted provisions of the Illinois Urban Renewal Consolidation Act, or in the alternative enter a preliminary and permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining Defendants, their successors in office, agents, and employees, and all other persons in active concert and participation with them from taking title and/or possession of property declared to be slum and blighted pursuant to Illinois Statutes without affording the owners an opportunity to have a fair hearing conforming to the requirements of

due process and equal protection clauses of the Fourteenth Amendment.

F. Allow Plaintiff and Plaintiff Class attorneys fees, expenses and Court Costs incurred herein.

G. Grant such additional or alternative relief as may seem to this Court to be just, proper and equitable.

Frederika Blankner, Plaintiff

Thomas J. Boodell, Jr.
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Chicago, Illinois 60611
222-9400

David S. Kreisman
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Chicago, Illinois 60603
236-5242

Thomas Grippando
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Atty. 57

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10 South LaSalle Street
Chicago, Illinois 60603
236-5242

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

FREDERIKA BLANKNER, being first duly sworn, on oath deposes and says that she has read the foregoing Complaint, and that the allegations contained therein are true to the best of her knowledge, information and belief.

Frederika Blankner

Subscribed and Sworn To
Before Me This _____
Day of _____,
19____.

Notary Public

OE-51003

App. 58

Casebook on campus planning and institutional development

TEN INSTITUTIONS

how they did it

Compiled by
JOHN B. RORK, *Specialist*
Campus Planning
Division of Higher Education

LESLIE F. ROBBINS, *Specialist*
Business Administration
Division of Higher Education

Circular No. 657

U.S. DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
Abraham Ribicoff, Secretary

Office of Education
Sterling M. McMurrin, Commissioner

Exhibit A

1762

Chapter IX

ALTHOUGH ITS TRUE SIGNIFICANCE has only recently been realized, the urban university and the city are natural partners in urban renewal and redevelopment activities, at least with regard to the university community. The campus, built to last and kept urbanely manicured, is by nature anomalous to the average city neighborhood whose private dwellings, tenements, commercial establishments, and industries are usually conceived for the current generation only. Deterioration sets in early and accelerates as the futility of the effort of any one owner in putting money into maintenance or renewal becomes evident. The most improvident owner becomes the pace-setter in the race toward slumdom. Only massive corporate action will arrest the process of decay.

The classic example of cooperative, energetic, and effective measures initiated by the administration of the university and implemented by public approval and civic authority is in the Hyde Park-Kenwood project of Chicago in the neighborhood of the University of Chicago. In the case to follow, Julian H. Levi, Executive Director of the South East Chicago Commission, documents the steps that were taken to arrest the growth of the slums and initiate a cycle of restoration before the disease became incurable.

In this instance there were differing degrees of blight, each requiring individual treatment, and differing degrees of pertinence to the university, measured mainly by the proximity to the campus proper. The city was concerned with the whole area of southeast Chicago; the university, with limited funds, had to concentrate mainly on neighborhoods inhabited by its faculty and students. However, due to the enactment of Section 112 of the Federal Housing Act in 1959, the money spent by the university on its own properties within the previous 5 years qualified for matching Federal funds for the city's wider redevelopment operations.

As dramatized by Mr. Levi's documents, the job was not an easy one. First the aroused people of the area had to be given a vehicle of expression. This vehicle became the South East Chicago Commission. Then the existing restrictions, compliance with which would prevent abuses leading to accelerated deterioration, had to be enforced. This took organization. Properties which had deteriorated too far to be salvaged, had to be acquired, the occupants relocated and the structures demolished. This took money. Finally, the whole area had to be planned for redevelopment with balanced provision for decent homes, for comfortable apartments, for parks, for schools, for churches, for social agencies, for police and fire stations, for playgrounds, and for shopping centers.

There was organized resistance. Opponents who opposed it on many different grounds had to be heard. Hard-headed realists had to be persuaded.

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Not only did the public authority have to be invoked at the city level but State statutes had to be amended and interpreted so as to cover the situation. The qualifying requirements of the Federal Housing Act for Federal aid had to be met.

The University of Chicago thus has pioneered in a project of sufficient scope to offer a pattern of action for many another urban university which finds itself in a similar predicament. It used the talents of its faculty and staff in such a way as to refute idle insinuations that professors are good only for ivory towers or ivy-covered walls. It showed that the urban university can be and is a vital part of its community, its city, its State, and its Nation, rather than an island of highbrow superciliousness.

Expanding the University of Chicago

By
Julian H. Levi

Executive Director, South East Chicago Commission

IN THE LAST DECADE of the Nineteenth Century, at the time of the founding of the University of Chicago, a land company offered to give property for the enterprise if it would settle in Morgan Park, a suburb of the city of Chicago. The founder and the organizers of the University of Chicago determined otherwise. They determined that the university they sought to establish should be an urban, not a suburban, university: part of a city supported by the facilities and opportunities of urban life and, in converse, affected thereby.

Historical Background

Although the University of Chicago began with a campus limited to three square city blocks, John D. Rockefeller, Sr., with prescience, recognized that the institution he was founding would require far more area. Thomas Goodspeed, in his history of the University of Chicago, tells the story:

> In the first days of the University the enlargement of the site from three blocks to four, an addition of six or seven acres, was looked upon as a most important and significant step in expansion. It was a great step in a transformation which changed the character and scope and outlook of the young institution. Compared, however, with the enlargement of the site in this second period of expansion, it was insignificant. This second movement in site enlargement was a progressive one. It had a very small beginning. Immediately following the ra[is]ing million dollars in ninety days in Chicago [a]nd the Trustees purchased the corner of Fift[y]-Street and Ellis Avenue, the site on which t[he] Building was later erected. In 1893 John [D.] Jr. gave to the University the site for the [U]tory at Lake Geneva, more than fifty acres of [l]to which small pieces were added from time [to] by purchase, increasing the grounds to seve[n] and a half acres. Early in 1894, lots were pu[r]on the northeast corner of Fifty-ninth Str[eet] University Avenue on which the President's [H]was built. In 1895 Mr. Rockefeller and Mr. [G]united in adding to the site the two blocks [s]the central quadrangles, to be used for athl[e]poses. No name being officially given to [t]grounds they were, for a number of years, [c]the students and the public Marshall Field. [I]however, the Trustees, responding to the d[e]the students and alumni that their admirat[i]affection for the "Old Man"[1] might receive [a]tion, formally and officially made the name [o]Field. In 1901 Mr. Rockefeller purchased [t]University, as a location for the power pl[a]west half of the block between Ingleside [A]Avenues and Fifty-seventh and Fifty-eighth [S]and Mr. Ryerson, about the same time, pu[r]most of the east half of the same block. T[h]1901 also marked the gift by Mr. Rockefeller [o]entire block south of the one just named, th[e]tecting the quadrangles on the west from any p[o]undesirable occupancy. For this same p[u]protecting the quadrangles—the three hundr[ed] south of Fifty-seventh Street, opposite the Ex[e]Club House and Mandel Assembly Hall, wer[e] chased. During the years 1901 and 1902, the [c]mon block was secured as the site of the Sch[o]Education.

[1] Amos Alonzo Stagg.

POOR COPY

ing), and for the demolition of such buildings and structures (including expenditures to assist in relocating tenants therefrom), all pursuant to such urban renewal or clearance plans, the land is to be cleared and redeveloped, in connection [illegible] action with such urban renewal project: Provided further, That no such expenditure shall be deemed ineligible as a local grant-in-aid in connection with any such project if made not more than five years prior to the authorization by the Administrator of a contract for a loan or capital grant for such urban renewal project: And provided further, That the term "educational institution" as used herein shall mean any educational institution of higher learning, including any public educational institution or any private educational institution, no part of the net earnings of which shall inure to the benefit of any private shareholder or individual." (Section 112 added by Section 418 of the Housing Act of 1959, Public Law 86-372, approved September 23, 1959, 73 Stat. 654-677).

Section 112 was debated on the floor of the U.S. Senate on August 18, 1959, at which time Senator Paul Douglas of Illinois and Senator Joseph Clark of Pennsylvania were able to carry the issue by voice vote. The Housing Act of 1959, as finally enacted and approved, included Section 112 in the form above indicated.

On February 16, 1960, the Urban Renewal Commissioner issued Local Public Agency Letter 193, thus giving administrative interpretation and mechanism for the implementation of Section 112.

Summary, First Project

Chancellor Kimpton on November 3, 1959, in what proved to be his final State of the University message, said:

> One of our chief difficulties, of course, is the neighborhood, but I am less worried about it than I was eight years ago. An obvious reason is that much of it is being torn down and rebuilt. But there are other reasons too. The deterioration of our surroundings has brought our faculty community closer together, both literally and figuratively. The vast majority lives within a mile radius of the University, and it is as pleasant and happy a community as you could find in the most bucolic of our sister institutions. More than that, most of the other major universities are in trouble too, and I discover that their troubles are even more acute than our own. Faculty who have actually lived in Hyde Park-Kenwood like it, and I seriously doubt that it now constitutes a major factor in the decision of a faculty member to leave the University. But bringing a new and distinguished faculty member to our campus is a different problem. Here I believe the difficulty is the city of Chicago itself.

Next, the South Campus Project, the Woodlawn District

Chancellor Kimpton and Glen Lloyd, Chairman of the Board of Trustees of the University of Chicago, informally proposed the South Campus Project to Mayor Richard Daley, whereby the university's total campus plan would be achieved and, at the same time, the university could make its Section 112 credits available to the city of Chicago.

On March 29, 1960, Chancellor Kimpton announced his resignation as chancellor of the university. In so doing, he noted:

> In common with other urban universities, the University of Chicago was confronted with the problem of encroaching blight. If the University was to exist, that threat had to be removed. It has been removed, and we now have assurance of a stable community in which the University will have the environment essential to its life and activities. * * *
>
> Why, then, do I want to resign? My conviction is that the head of such a university as this one can do his best work for it within a reasonably short time. The University every so often requires a change in leaders who can apply fresh and sharply objective appraisals, and start anew, free of the associations, friendships, and scars of a common struggle.
>
> I believe that the history of our University bears me out in showing the renewed vitality and intensity which came with each of my predecessors and the new and distinctive contributions they were able to make through the direction they gave the University.
>
> This is the more understandable—and this is not a complaint—when I remind you that the job is an enormously demanding and exhaustive one.
>
> Finally, I can only say that, were I not confident you could find someone who could do the job from here on better than I could do it, I would not resign. The University of Chicago means more to me than I am able to express.

Despite his resignation, Chancellor Kimpton said:

> I am willing to continue as president of the South East Chicago Commission in the work of neighborhood conservation if I am asked to do so, and provided, of course, my future activities make this possible.

On July 18, 1960, Chancellor Kimpton and hairman Lloyd formally presented the South ampus Proposal to the Chicago Land Clearance ommission. They noted that the University ned approximately 60 percent of the total land ea between 60th and 61st Streets, Cottage Grove Stony Island Avenues; that 26.5 acres were not owned and were now characterized by widespread decay and deterioration. They noted that e University of Chicago would generate approximately $6,893,000 of Section 112 credits. hich would be matched by $21 million of Federal rban Renewal credits available to the city of hicago; that of this amount the South Campus roject would cost approximately $6,500,000, thus aving available to the city $14 million for use in pport of urban renewal programs as the Mayor nd city council might determine.

On August 2, 1960, the Chicago Land Clearance ommission determined to make the requested urvey, which was actually undertaken in January f 1961. The Chicago Plan Commission, on January 26, 1961, agreed to prepare a total Woodlawn . This work is now in process.

George Wells Beadle was inaugurated as Chancellor of the University of Chicago on May 4, 1961. le became President of the South East Chicago ommission on June 29, 1961. Chancellor Beadle, his inaugural address, reaffirmed the commitment of the University of Chicago to its neighborood:

> One of the questions about the University of X that had to be answered was, 'Where should it be located?' We, its builders, thought of a scenic setting—hills, woods, a lake: perhaps it should be near the mountains. It should, we thought, be near a fair-sized city but not in it. It should be in an area in which it would have social impact on its community. It would be a residential university, with good faculty and student housing, but it would be separated from the "outside world" by thousands acres of surrounding land.
>
> When my wife and I were first being "looked over" for the University of Chicago, we could not help thinking, "How different from the University of X! Perhaps, we thought, it might be possible to move a university out of its crowded, smoky surroundings to the oak-covered hills to the south and west—near the Argonne Laboratory, example. The cost would be great, but think of the problems that would be left behind.
>
> What a mistake! We are not at all sure now that even the University of X should be isolated in the country. Certainly the University of Chicago would be a far less interesting place and a far less significant institution *if it were* so isolated. The problems it faces in helping to rebuild a section of a great city are not only challenging in themselves but they are also of the greatest national importance. Until we Americans have learned to rebuild and prevent slums, restore beauty to our cities, and provide education and social opportunities to people who have not had them—largely because of the *color of their skins*—we will not have justified the faith of those who laid the foundations of our nation. We cannot do it by running away or by burying our heads in the sand.
>
> If a great university will not stay and use its knowledge, wisdom, and power to help solve a critical problem, who will do it? There is talk of a Peace Corps and of other grand schemes to help underdeveloped nations in far parts of the world. We should, of course, do everything possible in that direction—but in doing so we should not forget that we must somehow learn to cure the sickness of poverty, unemployment and racial discrimination that blight the hearts of our great cities.
>
> In our own surroundings, a magnificient start has been made through the combined efforts of the university, the local community, the city, the state, and the federal government. We owe a deep debt of gratitude to Lawrence A. Kimpton for taking the lead in this enormously difficult and often discouraging undertaking. We must keep up the effort, for if we succeed we will have established a pattern for the rest of the nation to follow. This is a noble goal for a noble university.

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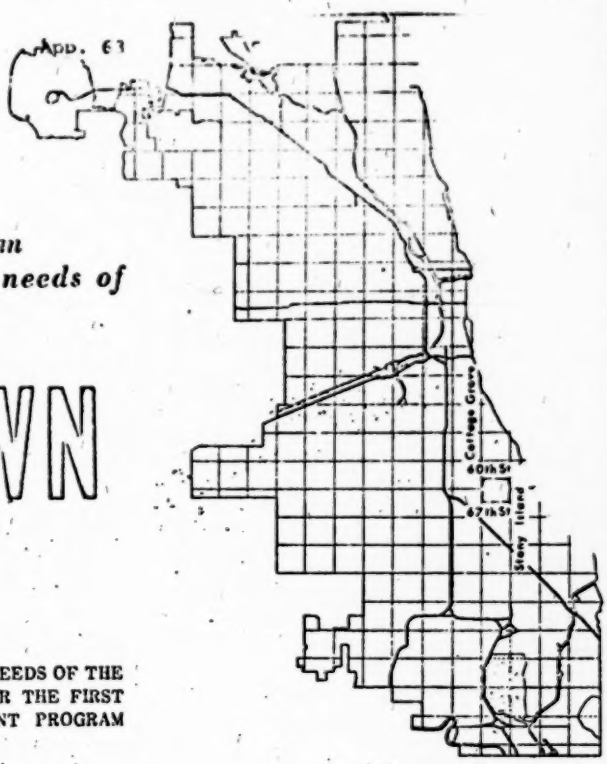
Appendix B



proposal for a program to meet the long-term needs of

OODLAWN

GRANGE PROPOSAL TO MEET THE NEEDS OF THE
NITY AND A SUGGESTED PLAN FOR THE FIRST
E OF AN IMMEDIATE IMPROVEMENT PROGRAM

PREPARED BY AND UNDER THE DIRECTION OF THE
DEPARTMENT OF CITY PLANNING

WITH FUNDS PROVIDED THROUGH:
COMMUNITY RENEWAL PROGRAM

BY THE
CITY OF CHICAGO

AND THE
HOUSING AND HOME FINANCE AGENCY
OF THE UNITED STATES GOVERNMENT

CITY OF CHICAGO
RICHARD J. DALEY, MAYOR

MARCH 1962

EXHIBIT B

FOR DISCUSSION PURPOSES ONLY

CHICAGO PLAN COMMISSION

John L. McCaffrey, CHAIRMAN

T. Norbert Engler, VICE-CHAIRMAN

Ira J. Bach, SECRETARY

Hon. Richard J. Daley
MAYOR, CITY OF CHICAGO

Joel Goldblatt

Virgil E. Gunlock

William Holabird

Ald. Thomas E. Keane,
CHAIRMAN, CITY COUNCIL COMMITTEE
ON FINANCE

Robert N. Landrum

John E. McNulty
PRESIDENT, BOARD OF LOCAL IMPROVEMENTS

Ald. Emil V. Pacini
CHAIRMAN, CITY COUNCIL COMMITTEE
ON BUILDINGS AND ZONING

John T. Rettaliata

Ald. Daniel J. Ronan,
CHAIRMAN, CITY COUNCIL COMMITTEE
ON TRAFFIC AND PUBLIC SAFETY

H. Stanley Wanzer

Ald. Arthur V. Zelezinski
CHAIRMAN, CITY COUNCIL COMMITTEE
ON PLANNING AND HOUSING

David Zisook

DEPARTMENT OF CITY PLANNING

Ira J. Bach
COMMISSIONER

Clifford J. Campbell
DEPUTY COMMISSIONER

COMMUNITY RENEWAL PROGRAM

Frederick T. Aschman, SUPERVISING CONSULTANT

Samuel J. Cullers, PROJECT DIRECTOR

STAFF
LARRY REICH, ASSISTANT COMMISSIONER OF
PLANNING AND RESEARCH, DEPARTMENT OF CITY PLANNI

THIS REPORT WAS PREPARED BY:
JERRAL T. HARPER, CHIEF OF AREA PLANNING
DEPARTMENT OF CITY PLANNING - AND
LEE PRAVATINER, COMMUNITY RENEWAL PROGRAM

CONSULTANTS FOR THE PREPARATION OF THE
WOODLAWN PLAN WERE BARTON-ASCHMAN ASSOCIATES.

COMMITTEE ON PHYSICAL AND SOCIAL PROGRAMMING FOR COMMUNITY RENEWAL

Clifford J. Campbell
DEPUTY COMMISSIONER
DEPARTMENT OF CITY PLANNING
(COMMITTEE CHAIRMAN)

Dr. Samuel L. Andelman
COMMISSIONER
BOARD OF HEALTH

Ira J. Bach
COMMISSIONER
DEPARTMENT OF CITY PLANNING

Daniel L. Flaherty
GENERAL SUPERINTENDENT
CHICAGO PARK DISTRICT

Raymond M. Hilliard
DIRECTOR
COOK COUNTY DEPARTMENT OF PUBLIC AID

Charles P. Livermore
EXECUTIVE DIRECTOR
COMMISSION ON YOUTH WELFARE

Edward A. Marciniak
EXECUTIVE DIRECTOR
COMMISSION ON HUMAN RELATIONS

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GENERAL SUPERINTENDENT OF
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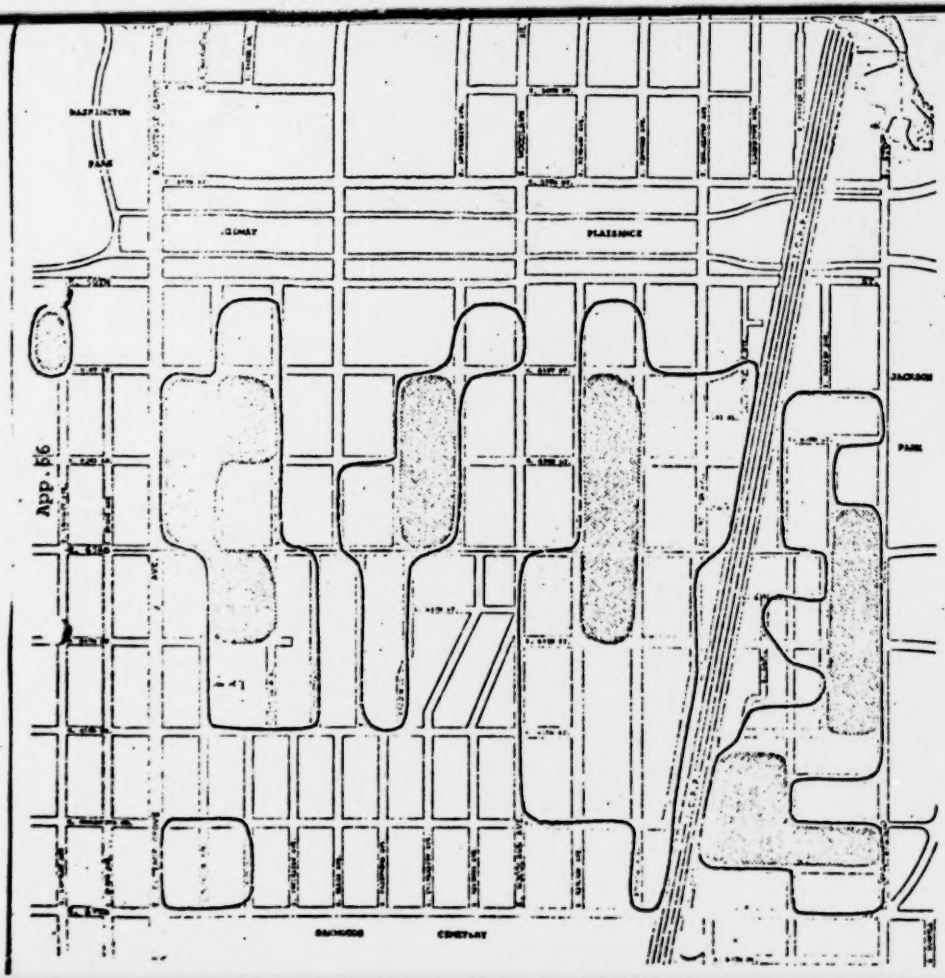

WOODLAWN COMMUNITY AREA PROPOSAL

HOUSING CONDITION : 1960

Percent of all housing units per block that are dilapidated and deteriorating.

- 0.0% - 19.9%
- 20.0% - 49.9%
- 50.0% - 100.0%

Source: U. S. Census of Housing 1960

CHICAGO PLAN COMMISSION
DEPARTMENT OF LAND PLANNING

FIGURE - 2 -

H

REPORT TO THE DEPARTMENT OF URBAN RENEWAL

on the Designation of Slum & Blighted Area

REDEVELOPMENT PROJECT
60th - COTTAGE GROVE

Department of Urban Renewal
City of Chicago

October 1, 1964

Exhibit C

REPORT TO THE DEPARTMENT OF URBAN RENEWAL
on the
DESIGNATION OF SLUM AND BLIGHTED AREA
REDEVELOPMENT PROJECT
60TH-COTTAGE GROVE
OCTOBER 1, 1964

Report Prepared by the Staff of the
Department of Urban Renewal

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No. 4 - Condition of Structures and Living Units

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No. 10 - Converted Structures and Change in Living Units Due to Conversions

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EXHIBITS

Existing Land Uses

Existing Structures

I. INTRODUCTION

The area discussed in this statement and hereinafter referred to as the 60th-Cottage Grove area, comprised of 105.6 acres, and located approximately 5 miles south and 1 mile east of Chicago's Central Business District, is bounded generally as follows: On the north, by East 60th Street, on the east by South Stony Island and Drexel Avenues, on the south by 61st and 63rd Streets, and on the west by Langley and Evans Avenues and an alley west of Cottage Grove Avenue. Those boundaries are shown on the exhibit entitled "Existing Land Uses," and in the legal description, attached to this statement.

From the data shown below, it is clear that the 60th-Cottage Grove area is a slum and blighted area and is eligible for redevelopment under the Urban Renewal Consolidation Act of 1961. That Act defines a slum and blighted area as "any area of not less ... than two (2) acres ... where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare."

The existing uses of the land and structures in the proposed project, the condition of the structures, and population estimates were obtained on field surveys conducted in May and August of 1964 and were supplemented by data gathered on previous surveys conducted in September and October of 1963. The results of these surveys are summarized below and are shown in greater detail in the attached tables.

II. EXISTING USES OF LAND AND STRUCTURES

Table 1, "Land Uses," shows for the area the amounts and percentages of land used for various purposes. The gross area is 105.6 acres, of which 25.9 acres or 24.5 percent are used for public rights-of-way. Of the net area of 79.7 acres, 38.2 acres or 47.9 percent are used for predominantly residential and related purposes, and 41.5 acres or 52.1 percent are used for predominantly commercial and other non-residential purposes. Twenty-five and five-tenths acres or 32.0 percent are used exclusively for residential purposes, 2.7 acres or 3.4 percent are used for mixed residential and non-residential purposes, and 12.9 acres or 16.2 percent are used for commercial and industrial purposes.

As shown in Table 2, at the time of the survey, 197 or 70.3 percent of the 266 structures in the area were being used or had last been used predominantly for residential or related purposes, and 79 or 29.7 percent were being used or had last been used predominantly for non-residential purposes. One hundred and seventy-four or 65.4 percent were being used exclusively for residential purposes. Fifteen structures or 5.7 percent were being used for mixed residential and commercial purposes, and 74 structures or 27.8 percent were being used entirely for non-residential purposes.

As shown in Table 3, of the 192 structures with living units, 87 structures contained fewer than 5 units, 60 structures contained from 5 to 20 units, and 45 structures contained more than 20 units.

III. CONDITION OF STRUCTURES AND LIVING UNITS

The survey showed that most of the structures and the living units contained in them had deteriorated to a degree where rehabilitation or conservation would not be economic. As shown in Table 5, 246 or 92.5 percent of the 266 structures in the area had one or more of the characteristics listed in the definition of a slum and blighted area in the Urban Renewal Consolidation Act of 1961. As shown in Table 7, 173 or 92.5 percent of the 187 residential structures had one or more of the characteristics listed in that Act and 73 of the 79 non-residential structures had one or more of these characteristics. Also, as shown in Table 4, 134 or 50.4 percent of the 266 structures in the area were dilapidated; 141 or 53.0 percent were dilapidated or lacked adequate sanit facilities. (Table 7) As shown in Table 6, 98 or 52.4 percent of the residential structures were dilapidated, and 36 or 45.6 percent of the non-residential structures were dilapidated.

As shown in Table 4, 1442 or 55.6 percent of the 2592 living units in the area were located in dilapidated structures. As shown in Table 5, 2469 or 95.3 percent of the 2592 living units in the area were located in structures which contained one or more of the deficiencies listed in the definition of a blighted area. As shown in Table 9, 1346 or 60.3 percent of the 2233 dwelling units, and 151 or 42.1 percent of the 359 single room units in the area lacked adequate sanitary facilities or were located in dilapidated structures.

IV. EXTENT OF RESIDENTIAL CONVERSION

As shown in Table 10, 105 or 54.7 percent of the 192 structures containing living units have been converted. These conversions have increased the number of living units originally in the area from 1653 to 2592, or by 56.8 percent. The number of dwelling units has increased by 54.5 percent, from 1445 to 2233, and the number of single room units increased by 72.6 percent, from 208 to 359. The number of living units in the converted structures increased 159.1 percent, from 590 to 1529. The number of dwelling units in these structures increased 133.6 percent, from 590 to 1378.

V. POPULATION CHARACTERISTICS

As shown in Table 13, the estimated number of persons living in the 60th-Cottage Grove area was 6344 persons, of which 5590 were members of two-or-more pers families, 472 were single persons living alone, and 282 were single persons living in private or institutional group households.

It is estimated that there were 1644 families in the area, of an average size of 3.4 members. Approximately 1179 or 71.7 percent of these families contained one or more minors. It is further estimated that approximately 90 or 5.5 percent of the families own the units in which they reside.

V. POPULATION CHARACTERISTICS CONT'D.

As shown in Table 14, approximately 42.9 percent of the 2168 households reporting length of residence had lived less than one year in the structure in which they were residing at the time of the survey; 61.4 percent had lived there less than two years; and 79.0 had lived there less than five years. Only 21.0 percent, or approximately one-fifth of the population had lived in the same structure in the area for five or more years.

VI. FEASIBILITY OF REDEVELOPMENT

A. ELIGIBILITY

As shown by the data referred to in the preceding sections of this statement and in the attached tables, the 60th-Cottage Grove area qualifies as a slum and blighted area as defined in the Urban Renewal Consolidation Act of 1961.

B. MARKETABILITY OF THE LAND

The land in the area is to be redeveloped with residential, institutional, and related uses. Precise plans for redevelopment will be prepared following designation of the proposed project as a slum and blighted area redevelopment project by the Department of Urban Renewal and approval of that designation by the City Council.

It is not anticipated that there would be any problems in marketing the land in the area.

C. FINANCIAL

The estimated net cost of redevelopment of the 60th-Cottage Grove area is within local fund limitations, and it is anticipated that federal funds will also be available to reduce local costs.

D. RELOCATION

Relocation of the residents of this area would not be more difficult than in other projects of the Department of Urban Renewal. It is estimated that 1597 families and 639 single persons would have to be relocated.

If the 60th-Cottage Grove area is designated as a project by the Department of Urban Renewal, and if that action is approved by the City Council, redevelopment will proceed at a rate consistent with the Department's policy of not displacing families for whom standard relocation units are not available. Full facilities of the Department of Urban Renewal's relocation service would be available to residents of the area to assist them in relocating into standard living units.

LEGAL DESCRIPTION SLUM & BLIGHT AREA
REDEVELOPMENT PROJECT 60TH-COTTAGE GROVE

A tract of land in the South Half of Section 14 and the East Half of the South East Quarter of Section 15, Township 38 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois, bounded by a line described as follows:

Commencing at a point on the center line of E. 60th Street, being its intersection with the center line of S. Stony Island Avenue; thence south along the center line of S. Stony Island Avenue to its intersection with the center line of E. 61st Street; thence west along the center line of E. 61st Street to its intersection with the easterly line of the right-of-way of the Illinois Central Railroad; thence north-easterly along the easterly line of the right-of-way of the Illinois Central Railroad to its intersection with the south line extended west of Lot 6 in Jackson Park, being a subdivision of that part of the South Half of the North East Quarter of the South East Quarter of Section 14, Township 38 North, Range 14 East of Railroad right-of-way; thence west along the south line extended west of Lot 6 aforesaid to its intersection with the center line of S. Blackstone Avenue; thence south along the center line of S. Blackstone Avenue to its intersection with the center line of East 61st Street; thence west along the center line of E. 61st Street to its intersection with the center line of S. Drexel Avenue; thence south along the center line of S. Drexel Avenue to its intersection with the center line of E. 63rd Street; thence west along the center line of E. 63rd Street to its intersection with the center line of S. Evans Avenue; thence north along the center line of S. Evans Avenue to its intersection with the north line extending west of the east-west public alley first north of E. 63rd Street; thence east along the north line extended west of the east-west public alley first north of E. 63rd Street to its intersection with the west line of the north-south public alley first west of S. Cottage Grove Avenue; thence north along the west line of the north-south public alley first west of S. Cottage Grove Avenue to its intersection with a line 75.55 feet south of and parallel with the south line of E. 61st Street; thence west along a line 75.55 feet south of an parallel with the south line of E. 61st Street to its intersection with the center line of S. Evans Avenue; thence north along the center line of S. Evans Avenue to its intersection with the center line of E. 61st Street; thence west along the center line of E. 61st Street to its intersection with the west line extended south of the north-south vacated public alley first west of S. Langley Avenue; thence north along the west line of the north-south vacated public alley first west of S. Langley Avenue to its inter-

section with the south line extended west of Lot 6 in Block 14 in Lincoln Brooke's Park End Subdivision of Lot 14 in Maher's Subdivision of the South East Quarter of Section 15, Township 38 North, Range 14 East of the Third Principal Meridian; thence east along the south line extended west of Lot 6 aforesaid to its intersection with the center line of S. Langley Avenue; thence south along the center line of S. Langley Avenue to its intersection with the south line extended east of Lot 7 in Block 14 in Lincoln Brooke's Park End Subdivision aforesaid; thence east along the south line extended east of Lot 7 aforesaid to its intersection with a line 148.43 feet east of and parallel with the west line of Block 16 in Maher's Subdivision of the South East Quarter of Section 15, Township 38 North, Range 14 East of the Third Principal Meridian; thence north along a line 148.43 feet east of and parallel with the west line of Block 16 aforesaid to its intersection with a line 43.46 feet south of and parallel with the south line of E. 60th Street; thence east along a line 43.46 feet south of and parallel with the south line of E. 60th St. to its intersection with the center line of S. Cottage Grove Avenue; thence north along the center line of S. Cottage Grove Avenue to its intersection with the center line of E. 60th Street; thence east along the center line of E. 60th Street to the point of beginning.

TABLE I
LAND USES

ITEM	ACRES	PERCENT
Gross Area	105.6	100.0
Streets and alleys	25.9	24.5
Net Area	79.7	75.5
Net Area	79.7	100.0
Predominantly Residential and Related Uses	38.2	47.9
Residential	25.5	32.0
Mixed Residential and Commercial 1/	2.1	2.6
Public and Institutional	2.1	2.6
Vacant Residential	8.5	10.7
Predominantly Non-Residential Uses	41.5	52.1
Commercial	12.6	15.8
Commercial-Residential 1/	.6	.8
Industrial	.3	.4
Public and Institutional	25.3	31.7
Vacant Non-Residential	2.7	3.4

1/ Improved parcels used for both residential and non-residential purposes are classified as residential if 51 percent or more of the floor space is used or intended for residential purposes.

Attachment to Report on Designation
60th-Cottage Grove
October 1, 1964

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TABLE 2

STRUCTURES BY USE 1/

	Number	Percent
Total Number of Structures	266	100.0
Predominantly Residential and Related Uses	187	70.3
Entirely Residential	174	65.4
Mixed Residential and Commercial	10	3.8
Institutional Residential	1	.4
Public Institutional	2	.7
Predominantly Non-Residential Uses	79	29.7
Commercial	47	17.7
Mixed Commercial and Residential	5	1.9
Industrial	2	.7
Public Institutional	25	9.4

1/ Vacant structures are classified by the most recent use or by the use for which they were built. Structures with both residential and non-residential uses are classified as residential if 51 percent or more of the floor space is used or intended for residential purposes.

Attachment to Report on Designation
60th - Cottage Grove
October 1, 1964

TABLE 3

STRUCTURES BY NUMBER OF LIVING UNITS

NUMBER OF LIVING UNITS IN STRUCTURE	NUMBER OF STRUCTURES	PERCENT
Total Structures with Living Units	192	100.0
1 unit	52	27.1
2 to 4 units	35	18.2
5 to 10 units	40	20.8
11 to 20 units	20	10.4
More than 20 units	45	23.5

Attachment to Report on Designation
60th - Cottage Grove
October 1, 1964

TABLE 4

CONDITION OF STRUCTURES AND LIVING UNITS

	TOTAL STRUCTURES			TOTAL LIVING UNITS IN STRUCTURES		
	NUMBER OF STRUCTURES	PERCENT	INFORMATION NOT AVAILABLE	NUMBER OF UNITS	PERCENT	INFORMATION AVAILABLE
Total	266	100.0		2592	100.0	
1. Dilapidated	134	50.4	1	1442	55.6	6
2. Obsolescent	53	19.9	1	793	30.6	4
3. Faulty Arrangement and Design	146	54.9	1	2016	77.8	10
4. Lacking Adequate Sanitary Facilities	60	22.5	1	1029	39.7	4
5. Lacking Adequate Ventilation or Light	147	55.3	1	1891	72.9	4
6. Excessive Land Coverage	170	63.9		2105	81.2	
7. Deleterious Use	30	11.3		478	18.4	
8. Deleterious Layout	174	65.4		2073	80.0	
9. Overcrowded	82	30.8		1245	48.0	
10. Without Any of the Above Deficiencies	20	7.5		123	4.7	

Attachment to Report on Designation
60-Cottage Grove
October 1, 1964

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TABLE 5

CONDITION OF STRUCTURES AND LIVING UNITS

	TOTAL STRUCTURES			TOTAL LIVING UNITS IN STRUCTURES		
	NUMBER OF STRUCTURES	PERCENT	INFORMATION NOT AVAILABLE	TOTAL UNITS	PERCENT	INFORMATION NOT AVAILABLE
Total	266	100.0		2592	100.0	
1. Dilapidated, obsolescent, of faulty arrangement or design, lacking adequate sanitary facilities, ventilation or light, of deleterious use or layout, excessive land coverage or overcrowded	246	92.5		2469	95.3	
2. Dilapidated, obsolescent, of faulty arrangement or design, lacking adequate sanitary facilities, ventilation or light, of deleterious use or layout	222	83.5	1	2305	88.9	4
3. Dilapidated, obsolescent, of faulty arrangement or design, or lacking adequate sanitary facilities	190	71.4	2	2120	81.8	10
4. Dilapidated or lacking adequate sanitary facilities	141	53.0	2	1497	57.8	10
5. Without any of the above deficiencies	20	7.5		123	4.7	

Attachment to Report on Designation
60th-Cottage Grove
October 1, 1964

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TABLE 6

CONDITION OF STRUCTURES

	RESIDENTIAL AND PREDOMINANTLY RESIDENTIAL STRUCTURES			NON-RESIDENTIAL AND PREDOMINANTLY NON-RESIDENTIAL STRUCTURES	
	Number of Structures	Percent	Information Not Available	Number of Structures	Percent
Total Number of Structures	187	100.0		79	100.0
1. Dilapidated	98	52.4	1	36	45.6
2. Obsolescent	25	13.4	1	28	35.4
3. Faulty Arrangement or Design	111	59.4	1	35	44.3
4. Lacking Adequate Sanitary Facilities	55	29.4	1	5	6.3
5. Lacking Adequate Ventilation or Light	123	65.8	1	24	30.4
6. Excessive Land Coverage	107	57.2		63	79.7
7. Deleterious Use	12	6.4		18	22.8
8. Deleterious Layout	119	63.6		55	69.6
9. Overcrowded	82	43.9		0	0.0
10. Structures Without any of the Above Deficiencies	14	7.5		6	7.6

Attachment to Report on Designation
60th - COTTAGE GROVE
October 1, 1964

TABLE 7

CONDITION OF STRUCTURES

	STRUCTURES		
	NUMBER	PERCENT	INFORMATION NOT AVAILABLE
A. Residential or Predominantly Residential Structures	187	100.0	
1. Dilapidated, obsolescent, of faulty arrangement or design, of deleterious use or layout, excessive land coverage, overcrowded, lacking adequate sanitary facilities, ventilation or light	173	92.5	---
2. Dilapidated, obsolescent, of faulty arrangement or design, of deleterious use or layout, lacking adequate sanitary facilities, ventilation or light	154	82.4	1
3. Dilapidated, obsolescent, of faulty arrangement or design, or lacking adequate sanitary facilities	135	72.2	2
4. Dilapidated, or lacking adequate sanitary facilities	105	56.1	2
5. Structures without any of the above deficiencies	14	7.5	
B. Non-Residential or Predominantly Non-Residential Structures	79	100.0	
1. Dilapidated, obsolescent, of faulty arrangement or design, deleterious use or layout, excessive land coverage overcrowded, lacking adequate sanitary facilities, ventilation or light	73	92.4	---
2. Dilapidated, obsolescent, of faulty arrangement or design, deleterious use or layout, lacking adequate sanitary facilities, ventilation or light	68	86.1	---
3. Dilapidated, obsolescent, of faulty arrangement or design, or lacking adequate sanitary facilities	55	69.6	---
4. Dilapidated, or lacking adequate sanitary facilities	36	45.6	---
5. Structures without any of the above deficiencies	6	7.6	

Attachment to Report on Designation
60th-Cottage Grove
October 1, 1964

TABLE 8

LIVING UNITS CLASSIFIED BY CONDITION OF STRUCTURES IN WHICH THEY ARE LOCATED

	DWELLING UNITS			SINGLE-ROOM UNITS		
	NUMBER OF UNITS	PERCENT	INFORMATION NOT AVAILABLE	NUMBER OF UNITS	PERCENT	INFORMATION NOT AVAILABLE
TOTAL NUMBER OF UNITS	2233	100.0		359	100.0	
LIVING UNITS IN STRUCTURES WHICH ARE						
1. Dilapidated	1286	57.6	6	156	43.5	-
2. Obsolescent	673	30.1	4	120	33.4	-
3. Of Faulty Arrangement and Design	1834	82.1	10	182	50.7	-
4. Lacking Adequate Sanitary Facilities	889	39.8	4	140	39.0	-
5. Lacking Adequate Ventilation and Light	1662	74.4	4	229	63.8	-
6. Of Excessive Land Coverage	1759	78.8	-	346	96.4	-
7. Of Deleterious Use	314	14.1	-	164	45.7	-
8. Of Deleterious Layout	1842	82.5	-	231	64.3	-
9. Overcrowded	1099	49.2	-	146	40.7	-
10. Without Any of the above Deficiencies	123	5.5	-	0	0.0	-

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60th-Cottage Grove
October 1, 1964

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TABLE 9

CONDITION OF LIVING UNITS

	DWELLING UNITS			SINGLE ROOM UNITS	
	NUMBER OF UNITS	PERCENT	INFORMATION NOT AVAILABLE	NUMBER OF UNITS	PERCENT
TOTAL LIVING UNITS	2233	100.0		359	100.0
LIVING UNITS IN STRUCTURES WHICH ARE					
1. Dilapidated, obsolescent, of faulty arrangement or design, lacking adequate sanitary facilities, ventilation or light, of deleterious use or layout, excessive land coverage or overcrowded	2110	94.5	0	359	100.0
2. Dilapidated, obsolescent, of faulty arrangement or design, lacking adequate sanitary facilities, ventilation or light, of deleterious use or layout	2061	92.3	4	244	68.0
3. Dilapidated, obsolescent, of faulty arrangement or design, or lacking adequate sanitary facilities	1876	84.0	10	244	68.0
4. Dilapidated or lacking adequate sanitary facilities	1346	60.3	10	151	42.1
5. Without any of the above deficiencies	123	5.5			0

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Attachment to Report On Designation
60th - Cottage Grove
October 1, 1964

TABLE 10

CONVERTED STRUCTURES AND CHANGE IN LIVING UNITS DUE TO CONVERSIONS

A. EXTENT OF CONVERSION OF STRUCTURES	NUMBER	PERCENT
Total Structures Containing Living Units at the Time of Survey	192	100.0
Converted Structures	105	54.7
Structures Not Converted	87	45.3
B. CHANGE IN LIVING UNITS IN ALL STRUCTURES IN THE AREA		
Number of Living Units for Which All Structures in the Area were Originally Designed	1653	100.0
Dwelling Units	1445	87.4
Single Room Units	208	12.6
Number of Living Units in the Area at the Time of Survey	2592	100.0
Dwelling Units	2233	86.1
Single Room Units	359	13.9
Increase in Total Number of Living Units in the Area	+ 939	+56.8
Dwelling Units	+ 788	+54.5
Single Room Units	+ 151	+72.6
C. CHANGE IN LIVING UNITS IN CONVERTED STRUCTURES		
Number of Living Units for Which Converted Structures were Originally Designed	590	100.0
Dwelling Units	590	100.0
Single Room Units	-	0 0
Number of Living Units in Converted Structures at Time of Survey	1529	100.0
Dwelling Units	1378	90.1
Single Room Units	151	9.9
Increase in Number of Living Units In Converted Structures	+ 939	+159.1
Dwelling Units	+ 788	+133.6
Single Room Units	+ 151	All units created through conversions.

Attachment to Report on Designation
60th - COTTAGE GROVE
October 1, 1964

TABLE 11

OCCUPANCY OF STRUCTURES
BY TENURE

	NUMBER	PERCENT
Total Structures in the Area	266	
Residential, Predominantly Residential and Related Uses	187	100.0
Occupied by owner only	37	19.8
Occupied by tenants only	95	50.6
Occupied by tenants and owners	51	27.3
Vacant	4	2.3
Non-Residential, Predominantly Non-Residential and Related Structures	79	100.0
Occupied by owner only	28	35.4
Occupied by tenants only	40	50.6
Occupied by owner and tenants	8	10.2
Vacant	3	3.8

Attachment to Report on Designation
60th-Cottage Grove
October 1, 1964

TABLE 12

OCCUPANCY OF LIVING UNITS
BY TENURE

		NUMBER	PERCENT
Total Occupied Units		2398	
Total Living Units Reporting		2375	100.0
Owner Occupied	124		5.2
Tenant Occupied	2251		94.8
Living Units for which Information is Not Available		23	
Total Vacant Units		194	

Attachment to Report On Designation
60th-Cottage Grove
October 1, 1964

TABLE 13

ESTIMATED POPULATION IN THE AREA CLASSIFIED BY FAMILY STATUS

	NUMBER	PERCENT
Total Population	6344	100.0
Members of Families	5590	88.1
Single Persons	754	11.9
Living alone	472	7.5
In group households	282	4.4
Number of Two-or-more Person Families	1644	100.0
Families with Minors	1179	71.7
Families with adults only	465	28.3

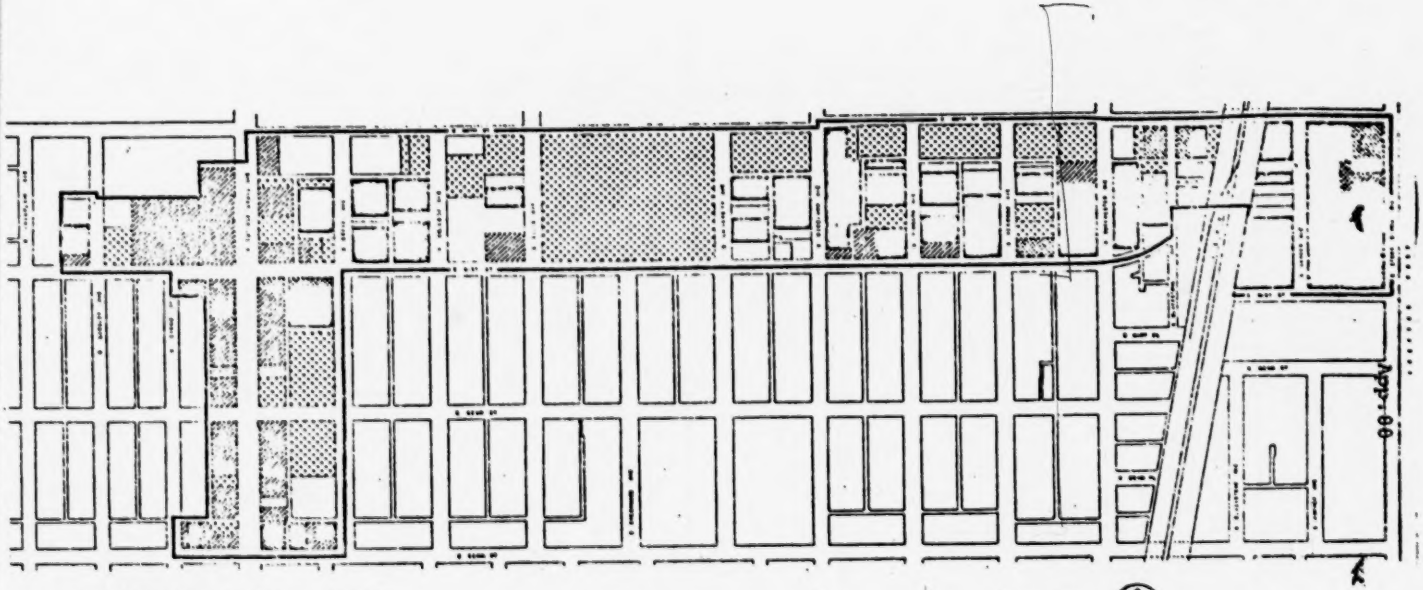
Average Family size: 3.4 persons

Attachment to Report on Designation
60th-Cottage Grove
October 1, 1964

TABLE 14

LENGTH OF RESIDENCE OF HOUSEHOLDS
IN PRESENT STRUCTURE

LENGTH OF RESIDENCE	NUMBER	PERCENT
All Households	2398	
All Households Reporting Length of Residence	2168	100.0
6 months or less	514	23.7
Between 6 months and 1 year	438	20.2
Between 1 year and 2 years	379	17.5
Between 2 years and 5 years	382	17.6
5 years or more	455	21.0
Information Not Available	230	



EXISTING LAND USE

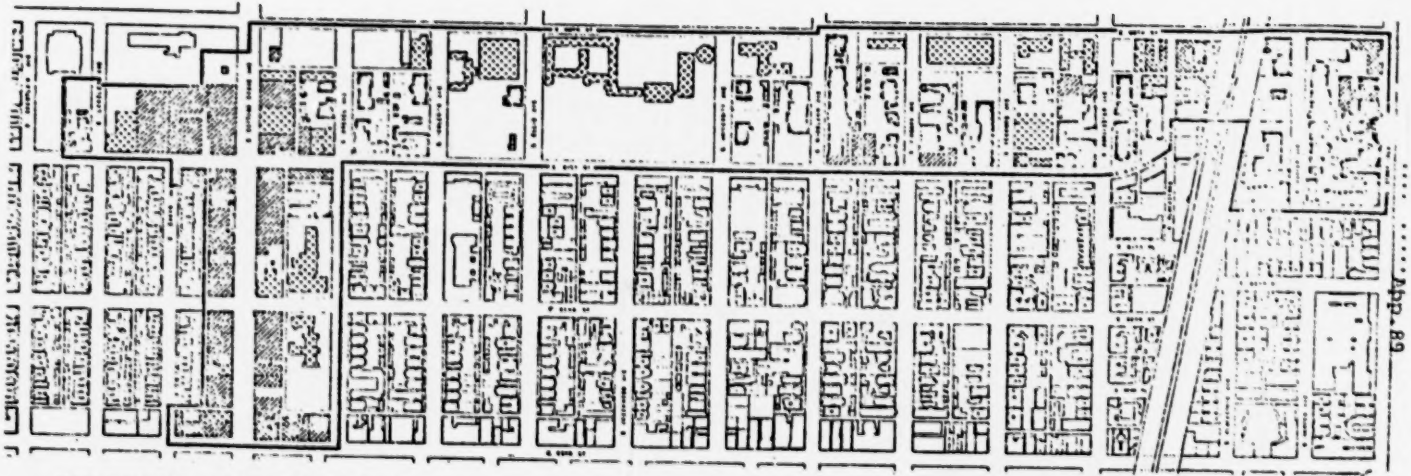
SLUM AND BLIGHTED AREA
REDEVELOPMENT PROJECT

60th - COTTAGE GROVE

DEPARTMENT OF URBAN RENEWAL
CITY OF CHICAGO OCTOBER 4, 1960

LEGEND

- BOUNDARY
- RESIDENTIAL
- RESIDENTIAL - COMMERCIAL
- COMMERCIAL
- PUBLIC - INSTITUTIONAL
- INDUSTRIAL
- VACANT



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EXISTING STRUCTURES

SLUM AND BLIGHTED AREA
REDEVELOPMENT PROJECT

60th - COTTAGE GROVE

DEPARTMENT OF URBAN RENEWAL
CITY OF CHICAGO OCTOBER 1, 1964

LEGEND

- BOUNDARY
- RESIDENTIAL
- RESIDENTIAL - COMMERCIAL
- COMMERCIAL
- PUBLIC - INSTITUTIONAL
- INDUSTRIAL
- SECONDARY STRUCTURE

Hyde Park II. Exhibit in the Loan and Grant Application made by Dunn to HUD - October, 1965

APPENDIX E
CONSTITUTION OF THE UNITED STATES
FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS:

RULE 23, the following sections:

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative partics are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (2) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

CIVIL RIGHTS ACT OF 1871:
Section 1, 17 Stat. 13, 42U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

62 Stat.968, 28 U.S.C.§2281:

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

ILLINOIS URBAN RENEWAL CONSOLIDATION ACT OF 1961, ILL. REV. STAT., Chapter 67 1/2 THE FOLLOWING SECTIONS:

91.103 Definitions

The following terms, wherever used or referred to in this Act shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

(a)"Department" means a Department of Urban Renewal created pursuant to this Act....

(c)"Municipality" shall mean a city, village or incorporated town....

(i)"Slum and Blighted Area" means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare.

(j)"Slum and Blighted Area Redevelopment Project"means a project involving a slum and blighted area as defined in subsection (i) of this section....

(l)"Redevelopment Project" shall mean a "Slum and Blighted Area Redevelopment Project" or a "Blighted Vacant Area Redevelopment Project" as the case may be, as designated in the determination of the Department pursuant to Section 11 of this Act, or as heretofore designated in the determination of a land clearance commission which is to be dissolved pursuant to this Act, and may include such additional area of not more in the aggregate than one hundred sixty (160) acres (exclusive of the site of any abutting Slum and Blighted Area Redevelopment Project or Blighted Vacant Area Redevelopment Project) located within the territorial limits of the municipality, abutting and adjoining in whole or in part a Slum and Blighted Area Redevelopment Project or Blighted Vacant Area Redevelopment Project which the Department deems necessary for the protection and completion of such redevelopment project or projects and of the site improvements to be made therein and which has been approved by the governing body of the municipality in which the area is situated, but the Department as to such additional area shall have power only to make studies, surveys and plans concerning services to be performed by the municipality or others, including the extension of project streets and utilities, the provision of parks, playgrounds or schools, and the zoning of such peripheral areas....

91.104 Department-Creation

The governing body of any municipality having more than 500,000 inhabitants, as determined by the last preceding Federal census, and in which there exist both a land clearance commission and a conservation board, by ordinance adopted by a majority of its members, may determine that there is need to consolidate the functions of the land clearance commission and of the conservation board in a single body and provide for the creation of a Department or Urban Renewal to operate within the boundaries of such municipality pursuant to the provisions of this Act.

91.109 Powers of department

The Department of Urban Renewal, as agent of the municipality, shall have and exercise the following powers with respect to redevelopment projects:

(a) To acquire slum and blighted areas and other areas which may constitute a redevelopment project as provided in this Act;

(b) To clear any such areas so acquired by demolition or removal of existing buildings and structures thereon; and to install, repair, construct streets, utilities and site improvements essential to the preparation of sites for use in accordance with a redevelopment plan;

(c) To convey real property so acquired for use in accordance with a redevelopment plan;

(d) To accomplish a combination of the foregoing to carry out a redevelopment plan.

In relation to the foregoing powers the Department may investigate into living and housing conditions in its area of operation to determine the extent and location of slum and blighted areas and other areas which may constitute a redevelopment project as defined herein and to ascertain in which of such area or areas development or redevelopment should be undertaken, and in connection with any such investigation may conduct public hearings; take testimony and proof under oath on the subject matter of such investigation, and cooperate with the planning agency of the municipality wholly or partially within its area of operation.

The Department shall have power to make studies, surveys and plans preliminary to or concerning any projects which are permissible under this Act.

The Department shall not be limited to one development or redevelopment project, but may have as many projects in process at one time as it may deem necessary to accomplish the purposes

of this Act.

A Department shall have no power to build or operate housing on any real property acquired under the provisions of Part I of this Act, other than to manage, operate and maintain existing housing or other buildings and improvements located thereon at the time of acquisition pending the demolition and removal of such buildings or improvements or the sale of any such buildings or improvements the demolition or removal of which is not deemed necessary to the redevelopment plan, and to use the rents and income to pay any expense in connection therewith.

91.110 Investigations and hearings

In making investigations herein authorized the Department may hold public hearings. Any hearing may be conducted by the Department or by a committee appointed by it, consisting of one or more members of the Department, or by an employee or agent specially authorized by the Department to conduct it. The Department and any member, employee or agent thereof so designated shall have power to administer oaths, take affidavits, subpoena and require the attendance and testimony of witnesses and the production of books and papers pertaining to such investigation.

91.111 Determination that area constitutes redevelopment project-Resolution-Approval

Whenever the Department determines that a particular slum or blighted area, or any other area which may constitute a redevelopment project, as herein defined, should be acquired pursuant to the provisions of this Act, such determination together with an accurate description of the area included in such determination and the date on which the determination was made shall be immediately set forth in the records of the Department. Such determinations by the Department may be made from time to time and

need not all be made at one time. Each such determination shall be evidenced by a resolution adopted by the Department.

The area of each such determination shall be specifically designated in the resolution as a "Slum and Blighted Area Redevelopment Project" or a "Blighted Vacant Area Redevelopment Project", according to the determination of the Department. A certified copy of such resolution shall be delivered to the governing body of the municipality in which the area is situated. No such determination shall be of any force or effect until such time as it has been approved by the governing body of the municipality in which the area is situated.

91.112 Acquisition of realty-Condemnation

Upon approval of the determination as provided in the preceding Section, the Department, as agent for the municipality, may proceed to acquire by gift, purchase or condemnation the fee simple title to all real property lying within the area included in the redevelopment project, including easements and reversionary interests in the streets, alleys and other public places lying within such area. If any such real property is subject to an easement the Department, in its discretion, may acquire the fee simple title to such real property subject to such easement if it determines that such easement will not interfere with the consummation of a redevelopment plan. If any such real property is already devoted to a public use it may nevertheless be acquired, provided that no property belonging to the United States of America, the State of Illinois or any municipality may be acquired without the consent of such governmental unit and that no property devoted to a public use belonging to a corporation subject to the jurisdiction of the Illinois Commerce Commission may be acquired without the approval of the Illinois Commerce Commission. Each Department, as agent for the municipality, is hereby vested with the power to exercise the

right of eminent domain. Condemnation proceedings instituted hereunder shall be brought by and in the name of the municipality and shall be in all respects in accordance with an Act entitled "An Act to provide for the exercise of the right of eminent domain," approved April 10, 1872, as heretofore or hereafter amended.

Any determination to acquire a particular slum or blighted area, or any other area which may constitute a redevelopment project, as herein defined, heretofore made a land clearance commission pursuant to the "Blighted Areas Redevelopment Act of 1947," approved July 2, 1947, as amended, and heretofore approved by the State Housing Board and the governing body of the municipality, shall be sufficient to authorize acquisition by the Department, as agent for the municipality, of all or any of the real property included in such area.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No 74-1046

FREDERIKA BLANKNER,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF IN OPPOSITION ON BEHALF OF THE UNIVERSITY OF CHICAGO; JOHN T. WILSON, ACTING PRESIDENT; THE BOARD OF TRUSTEES OF THE UNIVERSITY OF CHICAGO; GAYLORD DONNELLY, CHAIRMAN; BEN W. HEINEMAN, FIRST VICE-CHAIRMAN; ROBERT P. GWINN, SECOND VICE-CHAIRMAN; AND WALTER V. LEEN, SECRETARY.

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QUESTION PRESENTED FOR REVIEW.

We respectfully submit that no legitimate question is presented for review by this Court. As will hereinafter appear, petitioner has previously sought certiorari from this Court to review essentially the same legal and constitutional points as

are now attempted to be raised. This Court denied certiorari, *Blankner* v. *City of Chicago,* 408 U. S. 931, 33 L. Ed. 2d 343, 92 S. Ct. 498 (1972), and further denied rehearing, *Blankner* v. *City of Chicago,* 409 U. S. 899, 34 L. Ed. 2d 159, 93 S. Ct. 181 (1972). No other or greater reason for granting review now exists.

STATEMENT OF THE CASE.

Petitioner's statement of the case does not adequately reveal the extensive nature of the underlying litigation.* Since we understand that the history of this litigation will be fully detailed in one or more briefs to be filed by other respondents in opposition to the petition for certiorari, we shall not indulge in unnecessary repetition.

However, we are impelled to note that the decision for which review is sought in this Court emanates from a controversy commencing with an eminent domain proceeding instituted in 1968 in the Circuit Court of Cook County, Illinois, from which petitioner has prosecuted two appeals to the Supreme Court of Illinois, two petitions for certiorari to the United States Supreme Court, a suit in the United States District Court for the Northern District of Illinois, Eastern Division, and an appeal to the United States Circuit Court of Appeals for the Seventh Circuit. Throughout the entire seven years of this litigation, petitioner has attempted to assert, under one format or another, essentially the same legal and constitutional issues. The decisions have all been adverse to petitioner, including the denial of certiorari by this Court on her former applications.

* The procedural background of the litigation is fully set forth in the City of Chicago's Response to Appellant's Motion for Injunction Pending Appeal, filed on August 2, 1973, in the United States Court of Appeals for the Seventh Circuit. Said Court denied the motion for injunction by order entered August 6, 1973.

REASON FOR DENYING THE WRIT.

Petitioner' Suit in the Federal Court Was Properly Dismissed as Being Barred by Prior Litigation of the Same Legal and Constitutional Issues.

Regardless of the label utilized—res judicata, collateral estoppel, prior issue determination, or waiver of federal forum—the decision of the Circuit Court of Appeals for the Seventh Circuit was correct in upholding the District Court's dismissal of petitioner's complaint for reasserting essentially the same contentions which were decided adversely to her in the State Courts, and with respect to which this Court previously denied certiorari.

The entire thrust of petitioner's argument throughout the long history of this litigation is that she was not afforded a hearing at the time of the legislative determination of slum and blight with respect to the area in which her property was located. She further contends that judicial confirmation of this legislative determination was predicated on a *prima facie* case being established by the condemning authority (City of Chicago) through the introduction in the eminent domain proceeding of evidence of the legislative determination, at which time the burden shifted to petitioner to disprove the condition of the area. This procedural process, according to petitioner, deprived her of constitutional guarantees of due process and equal protection.

On petitioner's appeal of the condemnation judgment to the Supreme Court of Illinois, she in essence raised and argued the same issues as indicated by the following portion of that Court's opinion in *City of Chicago* v. *Walker (Blankner)*, 50 Ill. 2d 69, 70-71 (1971):

> "As grounds for reversal defendant contends that the trial court erred in denying her traverse. She argues that

she was denied an opportunity to introduce evidence to prove that the area generally, and her property specifically, were not blighted. She contends further that the circuit court's ruling that proof of the resolution and ordinance declaring the area blighted and authorizing its acquisition made a *prima facie* case erroneously shifted to her the burden of proof that the area was not slum and blighted, thus denying her due process and equal protection rights guaranteed under the fourteenth amendment to the constitution of the United States.

"The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a *prima facie* case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case (*City of Chicago* v. *Barnes*, 30 Ill. 2d 255; *Chicago Land Clearance Com.* v. *Quinn Home Builders*, 11 Ill. 2d 111), and the trial court did not err in denying the traverse and motion.

* * * * *

"We have considered the arguments of defendant and of *amici curiae* that acquisition of the defendant's property through condemnation for resale to the university denies to this defendant the equal protection of the law. We have previously held that the taking of land for the redevelopment of slum and blighted areas is a taking for a public purpose, and the fact that a portion will be resold for development for private purposes does not render the condemnation invalid. (*Chicago Land Clearance Com.* v. *White*, 411 Ill. 310) We do not discuss the remaining contentions of *amici curiae* for the reason that insofar as they are relevant to issues presented by the record they have been determined by our holding in *City of Chicago* v. *Zwick Co.*, 27 Ill. 2d 128."

From the affirmance of the trial court by the Supreme Court of Illinois, petitioner sought certiorari from the Supreme Court of the United States, which was denied. (*Blankner* v. *City of Chicago*, 408 U. S. 931, 33 L. Ed. 2d 343, 92 Sup. Ct. 498)

Petitioner then sought rehearing in this Court, which was likewise denied. (*Blankner* v. *City of Chicago*, 409 U. S. 899, 34 L. Ed. 2d 159, 93 Sup. Ct. 181) Petitioner's briefs in connection with this prior application for certiorari and rehearing are substantially identical to the present application for certiorari. Even a cursory examination of these earlier briefs will make it abundantly clear that the present litigation is merely a rehash of what petitioner has urged and argued before. For the convenience of this Court, we note that petitioner's prior briefs in this Court were filed under the following case numbers:

Petition for Writ of Certiorari—No. A-1026

Reply to Brief for Respondent City of Chicago in Opposition—No. 71-1549

Petition for Rehearing of Petition for Writ of Certiorari—No. 71-1549

In her appeal to the Supreme Court of Illinois from the condemnation judgment, petitioner urged and argued without reservation the same federal constitutional issues which are asserted in the federal suit below. The only difference is that petitioner now has framed her contentions under a somewhat different format—an alleged violation of the Civil Rights Act (42 U. S. C. § 1983). This difference is merely one of form and not of substance. Having litigated in the State Courts without reservation the issues relative to the alleged infringement or abridgment of her federal constitutional rights, petitioner may not relitigate those same issues in the Federal Courts. [*England* v. *Louisiana Medical Examiners*, 375 U. S. 411, 11 L. Ed. 2d 440, 84 S. Ct. 461 (1964)] Considerations of economy of judicial time and public policy interdicting repetitious litigation bar a rehearing of the same issues which are at the core of petitioner's suit below. [*Commissioner* v. *Sunnen*, 333 U. S. 591, 92 L. Ed. 898, 68 Sup. Ct. 715 (1948)]

CONCLUSION.

The more-than-seven-year history of this litigation amply testifies to the exhaustive prosecution of petitioner's legal contentions and the patient judicial consideration she has received. While it is altogether fitting that our system of jurisprudence scrupulously heed a claim of abridgment of constitutional guarantees, it is not appropriate to abuse the process by repetitious and protracted litigation which frustrates a valid public program of slum and blight clearance. Petitioner has had a fulsome day in court—and enough is enough.

We respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondents, The University of Chicago, et al., as Above Captioned.

SUPREME COURT, U. S.

MAR 2

MICHAEL ROD

IN THE

Supreme Court of the United States

OCTOBER, 1974 TERM

No. 74-1046

FREDERIKA BLANKNER,

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a Municipal corporation; et al,

Respondents.

BRIEF OF RESPONDENTS SOUTHEAST CHICAGO COMMISSION AND JULIAN LEVI IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Petitioner, who has been afforded an opportunity to a full hearing in the state trial court, who has pursued the full gamut of appellate review in the state courts, and who has sought, on two previous occasions, further review from this Court (*Blankner* v. *City of Chicago*, 408 U.S. 931 (1972) and *Blankner* v. *City of Chicago*, 409 U.S. 899 (1972)), has, by this proceeding, presented the substantial federal question necessary for the granting of *certiorari*.

STATEMENT OF THE CASE

This litigation arises out of the condemnation by the City of Chicago of a tenant-occupied building owned by the plaintiff and situated in an area designated as the "60th Cottage Grove Slum and Blighted Area Redevelopment Project—60th Cottage Grove" (hereinafter referred to as the "Urban Renewal Area"). (Pet. App. p. 33) *Chicago* v. *Walker (Blankner)*, 50 Ill. 2d 69 (1971).

In summary form, a petition to condemn the Petitioner's property was filed by the City of Chicago on April 1, 1968, in the Circuit Court of Cook County, Illinois. The Petitioner's property was one of several parcels declared to be situated in a slum and blighted area.

Petitioner filed a traverse and motion to dismiss by which she challenged: (a) the conclusion that the area was slum and blighted; (b) the right of the City to acquire her property by the exercise of eminent domain; and (c) that the taking of her property was for a public purpose. A hearing was held on the traverse and motion to dismiss. The City presented its evidence. Petitioner, however, declined to offer any evidence on the ground that the City had failed to establish a *prima facie* case. (*Chicago* v. *Walker, supra.*) (Pet. App. p. 42.)

The traverse and motion to dismiss were denied. A jury trial was subsequently held on the issue of just compensation and judgment was entered in the amount of $40,750.00.

Petitioner thereafter unsuccessfully appealed the condemnation proceeding to the Supreme Court of Illinois, which action culminated in the denial of *certiorari* by this Court on June 26, 1972. *Chicago* v. *Walker (Blankner)*, 50 Ill. 2d 69 (1971), *cert. denied,* 408 U.S. 931 (1972). A Petition for Rehearing thereafter filed by the Petitioner was denied by this Court on October 10, 1972. *Blankner* v. *City of Chicago,* 409 U.S. 899 (1972).

Finally, after running the full gamut of appellate review in the state courts, and after having unsuccessfully sought further review from this Court, Petitioner filed a multi-count complaint in the United States District Court for the Northern District of Illinois alleging, in essence, that the defendants unconstitutionally conspired to deprive her and members of her purported class of their property without due process of law and challenging the constitutionality of the Illinois Urban Renewal Consolidation Act of 1961 (Ch. 67½, §§ 91.101, *et seq., Ill. Rev. Stats.* (1973)) (Pet. App., pp. 33-57).

It is respectfully submitted that substantially the same issues raised in the instant proceeding were previously raised and presented to this Court by the Petitioner in 1972. (Pet. App. p. 33) *Blankner* v. *City of Chicago,* No. A-1026, No. 71-1549, 408 U.S. 931, 409 U.S. 899 (1972).

A three judge court was requested by Petitioner to consider the merits of Counts II, III and IV of the Complaint.

All of the defendants filed Motions to Dismiss upon the ground that the Petitioner had failed to state a claim upon which relief may be granted under 42 U.S.C. §§ 1983, 1985 and 1986.

On October 12, 1972, the District Court entered its Memorandum Opinion and Order denying the convening of a three judge court (Pet. App. A, pp. 1-2).

On April 18, 1973, the District Court entered its Memorandum Opinion and Order by which it refused to reconsider its denial of a three judge court, and granted the defendants' Motions to Dismiss (Pet. App. B, pp. 3-19).

The cause was thereafter appealed to the U.S. Court of Appeals for the Seventh Circuit, which affirmed. (Pet. App., p. 20)

This Petition emanates therefrom.

REASONS FOR DENYING THE WRIT

I.

The Court Below Correctly Ruled That the Petitioner Was Barred From Relitigating Issues Previously Decided.

Contrary to statements of the Petitioner, the decision rendered by the District Court and affirmed by the Court of Appeals for the Seventh Circuit is not in conflict with the decisions of the Courts of Appeals of the Fifth and Second Circuits. Both *Mack* v. *Florida State Board of Dentistry*, 430 F. 2d 862 (5th Cir. 1970), *cert. denied*, 401 U.S. 960, and *Lombard* v. *Board of Education of City of New York*, 502 F. 2d 631 (2d Cir. 1974), cited by the Peti-

tioner, are distinguishable on the facts and totally inappropriate to this proceeding.

There is no conflict between the Circuits. Thus, Judge Gurfein states, in *Lombard*:

> "Of course, where a constitutional issue is raised in the state court, as it can be in an Article 78 proceeding by treating it as an action for a declaratory judgment, Matter of Kovarsky v. Housing & Development Administration, 31 N.Y.2d 184, 335 N.Y.S.2d 383, 286 N.E. 2d 882 (1972), the litigant has made his choice and may not have two bites at the cherry. See Thistlethwaite v. City of New York, 497 F.2d 339 (2d Cir. 1974)." *Lombard* v. *Board of Education of City of New York, supra,* at pp. 636-637.

Consistently, Judge McLaren states:

> ". . . [P]laintiff essentially asserts that her civil rights were violated in that defendants took advantage of unconstitutional state laws in order to deprive her of her property. It appears that plaintiff and amici curiae in the state court proceedings challenged the constitutionality of the state laws at that time and that the questions of law presented here were resolved against them. Although the federal civil rights claim is not completely barred by the doctrine of res judicata, it appears to this Court that plaintiff is barred from relitigating the issues previously decided. *Commissioner of Internal Revenue* v. *Sunnen,* 333 U.S. 591, 598 (1948); *Goss* v. *Illinois,* 512 F.2d 257, 259 (7th Cir. 1963). This holds true even when federal constitutional questions are decided by state courts. *Gart* v. *Cole,* 166 F.Supp. 129 (S.D.N.Y. 1958), *aff'd* 263 F. 2d 244 (2d Cir.), *cert. denied,* 359 U.S. 978 (1959). When the issue of the constitutionality of the statutes involved has already been resolved against a plaintiff, subsequent allegations that utilization of the statutes constitutes a denial of due process fail to state a claim." (Pet. App., p. 11)

II.

The Court Below Committed No Error In Ruling That the Petitioner Was Not a Proper Class Representative.

Rule 23(a)(3) of the Federal Rules of Civil Procedure requires that the claims of the named plaintiff be "typical of the claims . . . of the class." Noting that most members of the class of property owners purportedly represented by the Petitioner "have not already fully litigated a condemnation proceeding in the state courts," the Court below found the defenses of res judicata and collateral estoppel unique to the Petitioner and thus atypical. (Pet. App., p. 27)

III.

The Refusal by the Court Below to Convene a Three Judge Court Was Consistent With the Policy Enunciated by This Court in Board of Regents of the University of Texas System v. New Left Education Project, 404 U.S. 541 (1972).

The Court of Appeals for the Seventh Circuit expressly refused to follow the language of the District Court for the Eastern District of Pennsylvania in *Williams* v. *Osser,* 326 F. Supp. 1139 (1971), as contrary to the policy enunciated by this Court in *Board of Regents of the University of Texas System* v. *New Left Education Project,* 404 U.S. 541 (1972), and *Moody* v. *Flowers,* 387 U.S. 97 (1972). Petitioner has cited no other Circuit Court to the contrary.

IV.

The Very Nature of These Proceedings Requires That the Doctrines of Res Judicata and Collateral Estoppel Be Given Their Full Scope.

The issues presented in the instant proceeding are essentially the same issues presented to this Court in 1972.

(*Chicago* v. *Walker (Blankner)*, 50 Ill. 2d 69 (1971), *cert. denied*, 408 U.S. 931, rehearing denied, 409 U.S. 899 (1972)). Nothing new has been raised.

CONCLUSION

For the foregoing reasons, Respondents, Julian Levi and Southeast Chicago Commission, pray that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1046

FREDERIKA BLANKNER, PETITIONER

v.

CITY OF CHICAGO, CARLA A. HILLS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

The petition for a writ of certiorari in the instant case was filed out of time. The order of the court of appeals denying petitioner's petition for rehearing was entered on November 21, 1974. The time for filing a petition for a writ of certiorari was not extended and, accordingly, the 90-day period provided by 28 U.S.C. 2101(c) for petitioning in civil cases expired on February 19, 1975. The petition was filed on February 20, 1974.

The time limit in 28 U.S.C. 2101(c) is jurisdictional. *Department of Banking* v. *Pink*, 317 U.S. 264. Accordingly, the petition should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

APRIL 1975.

DOJ-1975-04

SUPREME COURT, U. S.

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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1046

FREDERIKA BLANKNER,

Petitioner,

vs.

THE CITY OF CHICAGO,
a Municipal corporation, et al.,

Respondents.

BRIEF IN OPPOSITION OF THE CITY OF CHICAGO RESPONDENTS

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In The

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October Term, 1974

No. 74-1046

FREDERIKA BLANKNER,

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Respondents.

BRIEF IN OPPOSITION OF THE CITY OF CHICAGO RESPONDENTS

ADDITIONAL OPINIONS BELOW

Petitioner has failed to include in her appendices the opinion entered in this controversy by the Illinois Supreme Court in *City of Chicago* v. *Walker et al. (Frederika Blankner, Appellant)*, reported at 50 Ill. 2d 69 (1971), cert. denied, 408 U.S. 931 (1972), rehearing denied, 409 U.S. 899 (1972). It is reproduced as Appendix A of this brief in opposition.

Relevant portions of the Chicago ordinance under which the area, in which petitioner's property is located, was designated an urban removal project—that is, Municipal Code of Chicago, Illinois, ch. 15—are reproduced in Appendix B of this brief.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition for certiorari.

QUESTIONS PRESENTED

1. Whether the filing and maintenance of this action by petitioner constitutes a dilatory abuse of the federal jurisdiction.

2. Whether the state courts have jurisdiction to protect federal constitutional rights.

3. Whether petitioner's cause of action is barred as res judicata, by virtue of a state court judgment entered against her, affirmed by the Illinois Supreme Court, and twice denied review by certiorari by this Court.

4. Whether petitioner was afforded due process of law in the administrative urban renewal proceedings, which resulted in the determination that the area in which her property is situated was slum and blighted.

5. Whether petitioner was afforded an opportunity to present evidence in her defense in the condemnation trial and deliberately declined to do so.

STATEMENT OF THE CASE

This action under the Civil Rights Act (42 U.S.C. §§1983, 1985(3), 1986 and 1988) grows out of an urban renewal condemnation proceeding in the Circuit Court of Cook County, Illinois. The judgment entered against petitioner there was affirmed by the Illinois Supreme Court in *City of Chicago* v. *Walker et al.*, 50 Ill. 2d 69, 277 N.E. 2d 129 (1971), cert. denied *sub. nom., Blankner* v. *Chicago,* 408 U.S. 931 (1972); rehearing denied, 409 U.S. 899 (1972).

In the case at bar petitioner seeks to relitigate the same controversy and the same issues under the guise of asserting that her federal right to due process of law was violated in the state court proceeding and that the condemnation was effected through a fraudulent misuse of federal urban renewal statutes. However, petitioner had already raised these claims in the state court proceeding, where they were rejected. That result was affirmed by the Illinois Supreme Court and this Court twice denied certiorari to review that affirmance.

Essentially what petitioner seeks here is a federal judicial re-review of the municipal administrative and legislative urban renewal determinations, made more than ten years ago, and the state court condemnation proceeding thereunder, which was tried seven years ago. The district court and the court of appeals have both declined to afford her that gratuitous luxury.

The Character Of The Urban Renewal Area

The acts complained of involve administrative and legislative steps taken, pursuant to state statute and city ordi-

nance, preparatory to the condemnation proceeding. The University of Chicago is an urban institution situated in a densely populated area. Fifteen years ago it was confronted with the typical problem of such urban universities of being surrounded and hemmed in by a deteriorating neighborhood (Petition, App. 59-62). Instead of acquiescing in the encroaching blight, the University of Chicago took energetic and effective measures to reverse the trend. It was instrumental in persuading the city government to establish an urban renewal project in the neighborhood of the university, known as the Hyde Park-Kenwood project.

On July 18, 1960, the University submitted to the City of Chicago the so-called South Campus proposal. Petitioner points out (Petition, p. 4) that 60% of South Campus was then already owned by the University. She fails to mention that that 60% of the area included the American Bar Association Center, the University of Chicago Law School, the elaborate Center for Continuing Education and the Shankman Orthogenic School. These structures found themselves cheek by jowl next to and intermingled with a rapidly deteriorating residential neighborhood, with obvious deleterious effects on the university community.

In January, 1961, the Chicago Land Clearance Commission, then a city agency, undertook a survey of the whole Woodlawn area, of which South Campus is a part. These findings were published in 1962. A reproduction of the cover and introductory pages of this report are attached to petitioner's complaint as Exhibit B (Petition, App. 63-65).

Again, in 1964, the Department of Urban Renewal of the City of Chicago, which had taken over the functions

of the Land Clearance Commission, undertook and published a detailed survey of the project area, now called 60th-Cottage Grove Redevelopment Project, in which it concluded that the area was slum and blighted. A reproduction of this report is attached to petitioner's complaint as Exhibit C (Petition, App. 67-90).

The report states that the 60th-Cottage Grove redevelopment area comprised 105.6 acres and is located approximately 6 miles south and one mile east of Chicago's central business district. It is bounded on the north by 60th Street (the south side of the broad Midway Plaisance), on the east by Stony Island Avenue and Jackson Park. It then runs south from one to three blocks, in various places, to 61st Street and 63rd Street, and west one mile to Cottage Grove Avenue and Washington Park.

Of this area, 25.9 acres or 24.5 percent are used for public rights-of-way. The remainder of 79.7 acres contains 36.2 acres or 47.9 percent, then used for predominantly residential purposes. 25.5 acres of the 79.7 acres, or 32.0 percent, was used exclusively for residential purposes, 2.7 acres or 3.4 percent was used for mixed residential and non-residential purposes, and 12.9 acres or 16.2 percent were used for commercial and industrial purposes (Petition, App. 69).

The survey showed that "most of the structures and the living units contained in them had deteriorated to a degree where rehabilitation or conservation would not be economic" (Petition, App. 70). It was found that 246 or 92.5 percent of the 266 structures in the area had one or more of the characteristics listed in the definition of a slum and blighted area in the Illinois Urban Renewal Consolidation Act of 1961 (Ill. Rev. Stat., ch. 67½, par. 91.103(i)), which states:

> "(i) 'Slum and Blighted Area' means any area of not less in the aggregate than two (2) acres located within the territorial limits of a municipality where buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are detrimental to the public safety, health, morals or welfare."

The report further stated that 173 or 92.5 percent of the 187 residential structures had one or more of the characteristics thus listed in the statute, and 73 of the 79 non-residential structures had one or more of these characteristics.

Table 10 of the report (Petition, App. 93) showed that 105 or 54.7 percent of the 192 structures containing living units had been converted. These conversions had increased the number of living units in the area from 1653 to 2592, or by 56.8 percent. The number of dwelling units had increased by 54.5 percent, from 1445 to 2233 and the number of single room units had increased by 72.6 percent, or from 208 to 359. The number of living units in the converted structures had increased 159.1 percent, from 590 to 1529, and the number of dwelling units had increased 133.6 percent, from 590 to 1378 (Petition, App. 70).

The report stated that there were 1644 families in the area, of an average size of 3.4 members. Of these 90 families, or 5.5 percent of the families owned the units in which they resided.

The Administrative Determination

On October 8, 1964, the five-member Board of the Department of Urban Renewal of the City of Chicago adopted

a resolution determining that the said 60th-Cottage Grove project area was slum and blighted and in need of redevelopment.

Petitioner claims (Petition, p. 6) that she did not learn of this administrative determination that the area was slum and blighted until three years later, in October, 1967, when the City made an offer to purchase her property, which she refused.

However, the ordinance under which the Urban Renewal Board operated—chapter 15 of the Municipal Code of Chicago, Illinois—empowers (sect. 15-5) the Board, in determining "the extent and location of slum and blighted areas and other areas which may constitute a redevelopment project" and in ascertaining "in which of such area or areas development or redevelopment should be undertaken" to "conduct public hearings, take testimony and proof under oath on the subject matter." [The text of the relevant portions of this ordinance is reproduced in Appendix B of this brief in opposition.]

It is unlikely that the Urban Renewal Board would make a determination that an area was slum and blighted and a suitable locus for redevelopment—particularly an area as important and prominent as the South Campus of the University of Chicago—without conducting a formal public hearing on the matter after giving formal written notice to each property owner affected.

But because of the very peculiar way in which petitioner conducted her defense of the condemnation proceeding, expressly declining to put in any evidence whatsoever, even evidence regarding an affirmative defense of lack of notice and opportunity to be heard—there is no evidence in the record whether or not petitioner had such

notice. The City, in making out its case, relied on the presumptive validity of the administration and legislative determinations, which petitioner in no way attempted to disprove.

The Legislative Determination

There was also a legislative determination. As the Petition (p. 5) states, on November 16, 1964, the City Council of Chicago adopted a resolution declaring the area slum and blighted and suitable for redevelopment, and authorized its acquisition by condemnation proceedings. Petitioner alleges that the City Council adopted this resolution in reliance on "the false and fraudulent DUR report and resolution." But there is no evidence in the record in support of such expletives.

The City Council of Chicago is organized into the usual legislative committees. Included among them is a Committee on Planning and Housing. This committee conducts hearings on such important matters as the creation of urban renewal projects. Recommendations of committees are subject to public debate in the full City Council.

It seems improbable that no committee hearing was held concerning the $12 million 60-Cottage Grove Redevelopment Project. If any substantial opposition to the project had developed among the owners of the several hundred parcels of land affected, failure to hold a hearing, if there was such failure (which is not conceded), would have attracted notice. But because of the bizarre conduct of petitioner's defense, the record does not reveal whether or not such a legislative hearing was had or whether there was debate on the floor of the City Council. The record does not even show whether petitioner, or any other interested property

owner, consulted the local alderman prior to or within a reasonable time after enactment of the ordinance.

However, the Journal of the City Council for November 16, 1964 (p. 3328), which was introduced into evidence in the condemnation proceeding, contains the report of the Committee on Planning and Housing, recommending approval of the determination of the Department of Urban Renewal that the area be acquired for slum clearance and redevelopment. This recommendation was concurred in by 8 members of the committee, with no dissenting vote.

The same page of the Journal discloses that, on motion of the chairman of the committee, the ordinance approving the DUR determination was adopted by a vote of 45 to 0. The local alderman, Despres, was among those voting in favor of the measure.

The Condemnation Proceeding

After the petitioner had declined to sell her property, the City of Chicago on April 1, 1968, filed a condemnation proceeding in the Circuit Court of Cook County, Illinois, to condemn petitioner's property and the owners of some 219 other parcels of land located in the project. This action was entitled *City of Chicago* v. *Robert L. Walker et al.*, No. 68 L 4969, being so named because Walker was the first-named defendant. He has long since ceased to be a participant in this protracted litigation.

Petitioner filed a traverse and motion to dismiss, and a hearing thereon was held on November 27, 1968. Petitioner was represented by counsel—by John O'Leary of the well-known Chicago law firm of Boodell, Sears, Sugrue and Crowley (R. C155 *et seq.*), the same firm that represents her in the instant petition for certiorari. Three

tenants of petitioner were also represented at this hearing by counsel—by David S. Kreisman, who is now one of the attorneys for petitioner. The tenants joined in the traverse and motion to dismiss. Also appearing by counsel at the hearing was Talman Federal Savings and Loan Association of Chicago, the then mortgagee of petitioner's premises.

At that time of the trial, of the 222 parcels in the project, 203 had already been acquired by the City by agreement. 19 parcels were still outstanding, and of these petitioner owned two. (R. 201 in *City of Chicago* v. *Walker et al.*, Ill. Supreme Ct., No. 41867.)

Petitioner's counsel stated to the court (*id.*, R. 194) that each urban renewal step taken under the laws of Illinois, the ordinance of the City of Chicago and the administrative procedures of the City's Department of Urban Renewal "has been challenged unsuccessfully."

Mr. O'Leary also admitted (*id.*, R. 194) that "there has been a history of the University of Chicago being surrounded with admittedly discouraging conditions." But he argued that the only proper course for the university was to acquire by piecemeal purchase.

Plaintiff's counsel declared (*ibid.*) that "the only thing that I can argue before this Court" was that the condemnation procedure was being improperly used to effect "the acquisition by a private person as and for an ordained and conceived plan." He admitted that another land clearance project, the Lake Meadows high-rise development, in which the land had been cleared by the City of Chicago and the land redeveloped by the New York Life Insurance Company, was not improper, although counsel for the city pointed out that that had also been "prearranged" (*id.*, R. 197).

Petitioner's counsel said nothing at this point about any lack of notice to the property owners of the administrative and legislative proceedings, nothing about any lack of due process.

The motion of petitioner's counsel to strike from the condemnation complaint reference to a "public purpose" was denied, and the traverse and motion to dismiss were denied. The case was continued to January 15, 1969, and then to February 10, 1969.

An appeal was taken by petitioner to the Illinois Supreme Court from the denial of her traverse and motion to dismiss. This appeal was dismissed as premature on January 16, 1969.

When the case came on for trial on February 10, 1975, petitioner was granted, over the City's objection, another continuance of two weeks. At this time, petitioner's counsel, Mr. O'Leary, advised the court that he had been informed by his client (who was not present in the courtroom) "that if today's continuance were not granted, my authority to represent her should at that moment have been terminated" (*id.*, R. 261). A week later, petitioner wrote the trial judge a letter, requesting that the cases be continued generally and without a specific date for trial. The court was informed that she wished to confer with various officials, including Mayor Daley and HUD Secretary Romney "himself," with a view to having her property scheduled for conservation, rather than demolition.

Despite these efforts, the cause came on for trial before a jury on February 25, 1969. A real estate appraiser, Scott W. Tyler, testified for the City. He stated that in the four years preceding April 1, 1968, the date the condemnation action was filed, the market for real estate in

the area had remained constant, with neither appreciation nor depreciation in values. He noted that the subject property was located in an old residential area developed primarily during the Columbian Exposition of 1893 (*id.*, R. 243).

The structure on the subject property of petitioner at 6043-45 South Woodlawn Avenue, Chicago, was described by appraiser Tyler as a three-story walk-up apartment building with a cut stone front wall and brick side and rear walls on a lot of approximately 8000 square feet.

As originally constructed, the building contained six apartments. But in the course of time it had been converted to 18 apartments. The interior walls were of lathe and plaster. But in the conversion drywall had been used. A fire had occurred in the building six years before, and drywall had been used in the repairs. The building had been rewired. An interior stairwell with wooden stairs was in poor condition. A photograph of the subject premises (*id.*, plaintiff's exhibit 2) was admitted into evidence. The appraiser also testified, as required by law, to the sale of a similar property outside the area, in fair to good condition, one block east and three blocks south, for $30,000.

Both petitioner's counsel and the attorney for the mortgagee declined to cross examine appraiser Tyler (*id.*, R. 250).

Another appraiser, William E. Cahill, Jr., also testified for the City and stated that another apartment building outside the area, similar to petitioner's and located two blocks south on the same street, had been sold the year before at a price of $27,500. The City also called a real estate broker, Richard J. Ruzich, who testified that the fair cash value of the subject property on the date the condemnation

action was filed was $43,500. The attorneys for the petitioner and the mortgagee did not cross-examine either Cahill or Ruzich (*id.*, R. 253-258).

In his argument to the jury, the trial lawyer for the City requested that it return a verdict for $43,500 (R. 262). The attorneys for petitioner and for the mortgagee declined to argue to the jury (*id.*, R. 265).

After viewing the property, the jury returned a verdict for $40,750 (*id.*, R. 265).

On March 21, 1969, the Boodell firm was granted leave to withdraw as counsel for petitioner, and Thomas Grippando, Esq., was allowed to substitute as her attorney. He presented motions in arrest of judgment and to set aside the verdict, which were denied.

Notice of appeal was filed by petitioner on March 31, 1969, and an amended notice of appeal on April 7, 1969.

The Status Quo

Meanwhile, the sum of $40,750, the condemnation award, was deposited by the City with the Treasurer of Cook County for the benefit of petitioner and other parties in interest. Petitioner declined to "accept" the award, but the Treasurer paid off the mortgage on the property from the proceeds. After the mortgage had been thus paid off, on petitioner's motion, the Illinois Supreme Court on May 27, 1969, stayed the judgment pending appeal and enjoined dispossession of petitioner from the premises during the pendency of the appeal.

To the present day, petitioner has continued for six years to reside on the mortgage-free property, with her 16 or 17 tenants, from whom she has continued to collect rents totaling in excess of $15,000 annually, without any

obligation to pay taxes. Yet, as of April 30, 1973, the City had expended in excess of $41,000 in maintenance of the building.

Petitioner secured several extensions of time to file her brief in the Illinois Supreme Court. In December, 1969, her attorney on the appeal, Alan S. Ganz, was permitted to withdraw, after his motion for an order requiring the City to pay petitioner's attorney's fees and expenses in the trial court and on appeal—pending the appeal—had been denied.

The next step taken by petitioner was to request the Illinois Supreme Court to appoint for her, as a poor person, counsel as the expense of the state. Upon denial of this application, petitioner sought certiorari from this Court, which was denied. *Frederika Blankner* v. *Chicago,* 400 U.S. 838 (October 12, 1970). Meanwhile, petitioner's time for filing her brief in the Illinois Supreme Court had been extended until 30 days after disposition of her petition for certiorari.

Petitioner then again began seeking extensions of time in which to file her appellant's brief. On January 27, 1971, she was granted a "first" extension to February 26, 1971. This was later extended to May 1, 1971. On May 24, 1971, she was granted leave to file her untimely brief instanter. The City filed its brief 12 days later. Petitioner then sought to have the oral argument postponed to September, 1971. This was denied and oral argument was heard on June 23, 1971.

The Affirmance By The Illinois Supreme Court

On November 24, 1971, the Illinois Supreme Court affirmed the condemnation award. *City of Chicago* v. *Walker et al. (Frederika Blankner, appellant),* 50 Ill. 2d 69, 277

N.E. 2d 129 (1971). Rehearing was denied on January 14, 1972. The opinion of the Illinois Supreme Court is reproduced in Appendix A of this brief in opposition. That opinion held (at 71) once more, that taking of land for the redevelopment of slum and blighted areas is a taking for a public purpose, and the fact that a portion will be resold for development for private purposes does not render the condemnation invalid. (*Chicago Land Clearance Com.* v. *White*, 411 Ill. 310.)

As for petitioner's claim of denial of due process, the Illinois Supreme Court declared (at 70, 71):

> "She argues that she was denied an opportunity to introduce evidence to prove that the area generally, and her property specifically, were not blighted. She contends further that the circuit court's ruling that proof of the resolution and ordinance declaring the area blighted and authorizing its acquisition made a *prima facie* case erroneously shifted to her the burden of proof that the area was not slum and blighted, thus denying her *due process* and equal protection *rights guaranteed under the fourteenth amendment to the constitution of the United States.*
>
> "The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a *prima facie* case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case (*City of Chicago* v. *Barnes,* 30 Ill. 2d 255; *Chicago Land Clearance Com.* v. *Quinn Home Builders,* 11 Ill. 2d 111), and the trial court did not err in denying the traverse and motion." (Emphasis supplied.)

103 days after the denial of a rehearing, Miss Blankner filed her second petition for certiorari in this Court, which

again denied it. *Frederika Blankner,* 408 U.S. 931 (June 26, 1972), rehearing denied, 409 U.S. 899 (December 10, 1972). On July 12, 1972, the Illinois Supreme Court vacated the stay.

The Federal Lawsuit

Miss Blankner had not reached the end of her resourcefulness. On July 25, 1972, she filed the instant civil rights suit. As a matter of courtesy to the district court, the City refrained from taking possession of the premises pending that court's decision.

In the federal action she has reiterated, in four counts, the same old contentions, which she has never tried to prove, and indeed expressly declined to prove. She has seasoned the dish with a liberal peppering of the terms "false" and "fraudulent" and lent the production allure by naming numerous distinguished individuals and institutions, including the University of Chicago and its President and Board of Trustees, and the Secretary of the U.S. Department of Housing and Urban Development, as parties defendant. The crowning achievement of the complaint is to label the cooperation of the University and the City in greatly improving the neighborhood a "conspiracy."

The Opinion Of The District Court

After denying her demand for a three-judge court, the district court granted her leave to file a more specific amended complaint, then dismissed that. The court noted (Petition, App. 13) the pronounced reluctance of the federal courts "to act in effect as courts of appellate jurisdiction when it is alleged that state court proceedings violated due process" and commented:

> "This reluctance stems from the necessity that every unsuccessful litigant in state court proceedings not be permitted to demand relief from alleged errors on the ground that due process was denied."

The district court found that petitioner and her amici curiae had "challenged the constitutionality of the state laws" in the state court proceedings and that "the questions of law presented here were resolved against them." In consequence, the district court concluded (Petition, App. 11, 12):

> "Although the federal civil rights claim is not completely barred by the doctrine of res judicata, it appears to this Court that plaintiff is barred from relitigating the issues previously decided, *Commissioner of Internal Revenue* v. *Sunnen,* 333 U.S. 591, 598 (1948); *Goss* v. *Illinois,* 312 F. 2d 257, 259 (7th Cir., 1963). This holds true even when the federal constitutional issues are decided by state courts. *Gart* v. *Cole,* 166 F. Supp. 129 (S.D.N.Y. 1958), *aff'd.* 263 F. 2d 244 (2d Cir.), *cert. denied,* 359 U.S. 978 (1959). When the issue of the constitutionality of the statutes involved has already been resolved against a plaintiff, subsequent allegations that utilization of the statutes constitutes a denial of due process fail to state a claim."

District Judge McLaren did not fail to observe (Petition, App. 14):

> "However, apart from these considerations, it should be remembered that although plaintiff contended at the time of the condemnation proceeding that the area was not slum and blighted, and that defendants took action to serve their own purposes, she chose not to present evidence either to contest the slum-and-blight determination, or to expose the alleged improper use of the statute."

The Affirmance By The Court Of Appeals

On October 24, 1974, the Court of Appeals for the Seventh Circuit affirmed that judgment, with Chief Judge Swygert dissenting in part. The majority agreed (Petition, App. 23, 24) that Miss Blankner "had an opportunity to litigate the slum and blight issue in the condemnation proceeding, but she deliberately bypassed it" and "had the opportunity to prove that her property was being taken for a private purpose but did not attempt to do so." It held that if there was any fraud in the condemnation proceeding, her remedy would lie in opening up the judgment by proceeding in the state courts under Illinois Rev. Stat. 1973, ch. 110, par. 72.

In partially dissenting, Chief Judge Swygert (Petition, App. 29-32) felt that petitioner had not had an opportunity to make a "meaningful challenge" of the administrative and legislative determinations that the area was slum and blighted. He accepted at face value petitioner's allegation that she "never received notice that her property was being taken for urban renewal until she received a letter in October 1967 from the city offering to purchase her property," thus overlooking the fact of record that Miss Blankner had declined to testify to that. Chief Judge Swygert termed the determination that the area was slum and blighted and selected for urban renewal "a self-fulfillment prophecy," since maintenance and improvement of the area would then immediately cease, followed by vandalism and a general drastic decline in property values. The dissenting opinion did not explain how petitioner could for three years remain in ignorance of the determination, while it had this widespread and drastic effect on the buildings in the area.

During the seven years that this litigation has been winding its way before one trial judge and jury, seven Illinois Supreme Court justices (twice), one U.S. District Court judge, three Court of Appeals judges and nine United States Supreme Court justices (three times), public funds deposited to purchase Miss Blankner's property and expended for surrounding properties have brought little return to the public. Because the stay has denied the City possession of the subject property, planning has been hampered, resulting in piecemeal treatment of small portions.

Until possession is acquired, the prospective purchaser, the University of Chicago, will not accept title to the tract, thus denying the City a purchase price of approximately $1,000,000 and interest due to delay. During the seven years the matter has been pending, construction costs have also risen markedly. But the most damaging result has been that a deteriorating community has been denied the rehabilitation prescribed seven years ago.

REASONS FOR DENYING THE WRIT

I.

THIS CONTROVERSY IS RES JUDICATA AND CONCLUDED.

THIS COURT HAS ALREADY TWICE REFUSED TO GRANT CERTIORARI TO REVIEW THAT JUDGMENT, WHICH WAS ENTERED IN 1968 AND AFFIRMED BY THE HIGHEST STATE COURT IN 1971.

The instant petition for certiorari evinces a misconception of our federal-state form of constitutional government. Petitioner argues (p. 11) that "a federal court should not be bound by the usual rules of res judicata and collateral estoppel when a plaintiff in a federal court suit who was a defendant in state court proceedings and compelled to litigate there, seeks to vindicate specially protected federal constitutional rights and alleges the prior proceedings themselves are constitutionally deficient."

"Compelled to litigate in the state courts" is strong, strange language. The state courts are as firmly bound by the Constitution of the United States as are the federal courts. The state courts have the power and duty to determine whether a state statute violates the United States Constitution, with the decision of the highest state court subject to discretionary review by this Court. *State of Georgia* v. *City of Chattanooga,* 264 U.S. 472, at 483, 484 (1924); *Alabama Public Service Commission* v. *Southern Railway Company,* 341 U.S. 341 (1951); *Baber* v. *Texas Utilities Co.,* 228 F. 2d 665, at 666 (5 Cir. 1956).

In effect, petitioner has here asked the federal district court, under the guise of proceeding under the Civil Rights Act, to exercise appellate court jurisdiction of a state court eminent domain proceeding, which is beyond the jurisdiction of the district court. Thus, in *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923), it was held that the district courts have no jurisdiction to annul a judgment of a state court on the ground that it is in conflict with the United States Constitution for lack of due process, where that question was before the state court for decision.

Petitioner endeavors to obscure the fact that she raised the federal constitutional issue of due process in the state court condemnation proceeding. This is quite plain from the opinion of the Illinois Supreme Court in reviewing that proceeding. That court in *City of Chicago* v. *Walker et al.*, 50 Ill. 2d 69, at 70 (1971) (reproduced as Appendix A of this brief), in describing Miss Blankner's contentions, stated:

> "She contends further that the Circuit Court's ruling . . . [denied] her due process and equal protection rights guaranteed under the constitution of the United States."

The Illinois Supreme Court then rejected petitioner's contentions with the following terse ruling:

> "The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a *prima facie* case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case. (*City of Chicago* v. *Barnes*, 30 Ill. 2d 255; *Chicago Land Clearance Com.* v. *Quinn Home Builders*, 11 Ill. 2d 111), and the trial court did not err in denying the traverse and motion."

The proper and legal federal recourse from that judgment available to petitioner was to petition this Court for certiorari. This she did and this Court twice denied her application. *Blankner* v. *City of Chicago,* 408 U.S. 931 (1972), rehearing denied, 409 U.S. 899 (1972). That terminated the controversy, including her claim of denial of due process.

The dismissal of the instant federal action by the district court and its affirmance by the court of appeals were in accord with prior urban renewal opinions of the Seventh Circuit, in which this Court also denied certiorari.

In *Harrison-Halsted Community Group, Inc.* v. *Housing and Home Finance Agency,* 310 F. 2d 99 (7 Cir., 1962), cert. denied 373 U.S. 914 (1963), a case, brought under the Civil Rights Act and involving the area that is now the Chicago Circle campus of the University of Illinois, an action instituted after the adoption of the urban renewal plan by the state administrative agency and its approval by the City Council, but before condemnation proceedings were filed, it was held that questions arising from the taking of property by condemnation for state purposes are ordinarily matters for determination by state, rather than federal courts. The court declared that a contention that the urban renewal program was depriving the plaintiffs of their property without due process of law was insufficient to invoke the federal question jurisdiction of the federal courts, even though the federal government was subsidizing the program.

In *Green Street Association* v. *Daley,* 373 F. 2d 1 (7 Cir., 1967), cert. denied 387 U.S. 932 (1967), the Seventh Circuit affirmed dismissal of a suit brought under the Civil Rights Act and attacking the constitutionality of an urban renewal

plan for a commercial mall on the ground that it eliminated a black residential neighborhood and was racially discriminatory.

The court noted that "state courts are as firmly bound by the Constitution of the United States as is a federal court and the proper forum for the enforcement of any constitutional rights that may have been violated is in the state courts with the right to petition this Court to make an ultimate determinaton, if it perceived a need to do so."

The opinion of Judge Swygert in *Green* expressly stated (at 7):

> "In summary, therefore, cases presenting challenges to urban renewal programs are matters for the condemnation proceedings in the state courts if the taking is ostensibly for a public purpose, even though violations of federally guaranteed rights are claimed."

The court added (at 6) that the power of eminent domain is legislative in character and, given a public purpose or use, the motives that underlie the exercise of that power may not be questioned.

II.

THERE IS NO CONFLICT BETWEEN THE DECISION OF THE SEVENTH CIRCUIT AND RULINGS OF THE SECOND AND FIFTH CIRCUITS.

It is claimed by petitioner (Petition, p. 15) that a direct conflict exists between the decision below and decisions of the Courts of Appeals for the Second and Fifth Circuits, and that this conflict requires the intervention of this Court.

The latest of the two cases thus cited (Petition, p. 15, 16) is *Lombard* v. *Board of Education of the City of New*

York, 502 F. 2d 631, at 635 (2 Cir., 1974). That was a civil rights action challenging, on due process grounds, administrative termination of plaintiff's employment as a substitute teacher, based on medical examinations which found him to be suffering from "an emotional upset that is of recent origin and is of a paranoid nature." Before instituting the federal lawsuit, Lombard had filed an action in the state courts for judicial review of the administrative determination. But in that proceeding he had not raised the due process issue, relying solely on allegations of prejudice and malice on the part of his principal. The district court dismissed his civil rights action, on the ground that Lombard might have raised the issue of due process in the state court and waived it by not doing so. The Second Circuit reversed, on the ground (at 635) that, since *Monroe* v. *Pape,* 365 U.S. 167 (1961), held that the federal civil rights remedy may be sought even though the state remedy has not first been sought, Lombard had not waived the "independent" issue of impairment of his right to a hearing.

However, in *Lombard* the Second Circuit very distinctly said (at 636, 637):

> "Of course, where a constitutional issue is actually raised in the state court, as it can be in a [New York state] Article 78 proceeding . . ., the litigant has made his choice and may not have two bites at the cherry."

Thus, there is no conflict between the Second and Seventh Circuits as to the law applicable to Miss Blankner.

The Fifth Circuit case that petitioner claims (Petition, pp. 15, 16) is in conflict with the opinion of the Seventh Circuit in the case at bar is *Mack* v. *Florida State Board of Dentistry,* 430 F. 2d 862, at 864 (5 Cir., 1970), cert.

denied 401 U.S. 960 (1971). That civil rights proceeding was brought by a dentist whose license had been revoked for advertising professional services at greatly reduced costs and allegedly taking undue liberties with female patients. The administrative hearing, chaired by a non-lawyer, was characterized by the Fifth Circuit as a confrontation rather than a hearing. It began at 9 a.m. and concluded at 11:35 p.m. The chairman overruled, often erroneously, 90% of the objections made by respondent's counsel, but sustained, often erroneously, 90% of the objections by the attorney for the board. The hearing was marked by continuous personal acrimony and unconcealed venom.

Dr. Mack did seek judicial review in the state courts, arguing that he had been deprived of a fair hearing. The Florida Court of Appeals, with no discussion of the events at the hearing, denied relief, and the Supreme Court of Florida denied certiorari without written opinion. Dr. Mack then filed a federal action under 42 U.S.C. §1983 and the 14th Amendment. The district court found for him and the Fifth Circuit affirmed in part, reversed in part, remanding the cause for a proper administrative hearing conducted by someone competent to do so, but suspending Dr. Mack's license pending such a hearing.

Unlike Miss Blankner, who declined to testify to her allegations, subject to cross-examination, Dr. Mack did attempt to present extensive evidence, most of which the administrative board refused to listen to. Apparently Dr. Mack was subjected to an horrendous ordeal, whereas Miss Blankner received every courtesy from the trial judge and the City's attorneys, including numerous continuances and extensions of time. The fact of the matter is that Miss

Blankner relied on taking issue with a well-established Illinois rule of law as to what constitutes a *prima facie* case in an urban renewal condemnation proceeding. Her contention was overruled, that result was affirmed by the Illinois Supreme Court and this Court has twice denied certiorari to review that very determination.

The petition for certiorari (p. 18) quotes some observations by this Court concerning modification of federal-state relations resulting from the adoption of the Civil Rights Acts. These observations are from Mr. Justice Stewart's opinion in *Mitchum* v. *Foster,* 407 U.S. 225, at 240, 242 (1972). That action was brought by the proprietor of a bookstore which county authorities were endeavoring in the state courts of Florida to close down as a public nuisance. Obviously, First Amendment rights were involved, and the state court proceedings had progressed only as far as the entry of a preliminary injunction against operation of the bookstore. At that point Mitchum sought a federal injunction under the Civil Rights Acts. A three-judge district court refused to enjoin the state court proceedings. On direct appeal, this Court reversed and remanded.

But, in so deciding, this court stated (at 243):

> "Today we decide only that the District Court in this case was in error in holding that, because of the anti-injunction statute, it was absolutely without power in this §1983 action to enjoin a proceeding pending in a state court under any circumstances whatsoever."

However, the Court, citing *Younger* v. *Harris,* 401 U.S. 37 (1971), expressly added the cautionary admonition that the principles of equity, comity and federalism must restrain a federal court when asked to enjoin a state court proceeding.

If Miss Blankner had filed this suit in the district court immediately after the condemnation action was instituted, she could have, under the *Mitchum* case, obtained a ruling that a federal court has the power, in an action under 42 U.S.C. §1983, to enjoin a state court proceeding. But it seems clear that, under the *Harrison-Halsted* and *Green Street* cases, the district would no doubt have referred her to the state courts for protection of her federal rights, subject, as the state courts are, to this Court's discretionary review. If the federal court had not refrained from entering the controversy, at most it would have directed that she be afforded an opportunity to contest the administrative and legislative determinations that the area was slum and blighted.

But Miss Blankner did not rush into federal court as soon as the condemnation suit was filed. She waited five years, until after she had completely exhausted the processes of adjudication and review. Then, by filing this action, she has prolonged her delaying tactics another three years—in the meantime enjoying a mortgage-free, tax-free residence and largely maintenance expense free and collecting rent from as many as 17 tenants, amounting to some $15,000 annually.

Surely, apart from the fact that the controversy is res judicata, this is an occasion for the exercise of federal restraint in the interest of equity, comity and federalism.

III.

PETITIONER HAS BEEN ACCORDED DUE PROCESS.

The gist of petitioner's plea to this Court is that the well-established presumption of validity attaching to legislative enactments and the traditional eminent domain condemnation procedure have operated to deprive her of a

meaningful opportunity to contest the determination that the area in which her property is located was slum and blighted at the time of that determination. (Petition, pp. 13-15.)

Even petitioner must admit that, except for that claim, she has been accorded due process in full measure and running over, both in the condemnation proceeding and in this attempt to invoke the federal civil rights laws. And even if she had attempted to prove, as she emphatically did not, by testimony subject to cross-examination, her allegations of lack of notice of the urban renewal project and of a fraudulent conspiracy between the University of Chicago and the city government, even then her position would still be untenable under a long line of decisions of the Illinois Supreme Court extending back over 30 years, confirmed from time to time to the extent on consistent denial of certiorari by this Court.

Petitioner was probably well advised not to offer any evidence. It is difficult to believe the impression she seeks to convey (Petition, p. 13) that she did not know about the urban renewal project, determined upon in 1964, until 1967. Such projects are commonly well publicized both in the metropolitan press and the neighborhood newspapers. This project no doubt was the subject of lively discussion in the politically aware neighborhood of the university co··nunity. The Chicago Urban Renewal Ordinance (Mu-n.. al Code of Chicago, Illinois, sect. 15-5) empowers the city urban renewal department to "conduct public hearings, take testimony and proof under oath on the subject matter" of an investigation as to whether an area is slum and blighted. If any significant opposition to the project had developed, it is improbable that it would have been adopted without public hearings, both before the Urban

Renewal Board and the appropriate committee of the City Council. If the petitioner had taken the witness stand, she might have found it difficult to explain away these obvious circumstances.

In the dissenting opinion of Judge Swygert—the only judicial support petitioner has found in seven years of litigation—the opportunity in the condemnation proceeding to contest the determination that an area is slum and blighted is described as "merely a mirage" (Petition, App. 31). The dissent argues that "[a]lthough an area may not have been slum and blighted at the time of the original designation, it becomes slum and blighted by the time of the condemnation" because "owners do not improve or even maintain their property in the face of imminent condemnation" (*id.*, App. 29). The question naturally presents itself how petitioner could remain in ignorance of the project while these catastrophic effects said to be occasioned by it were occurring.

The dissent also contends (*id.*, App. 30), "it would be unfair to place the burden on her to show the condition of two hundred sixty-six buildings over four years prior to the trial." Surely, petitioner could have testified to the condition of her own property and the buildings in the immediate vicinity, if she believed it was a mistake to characterize that immediate area as slum and blighted and include it in the urban renewal project. That would not have placed any undue burden on her. She inherited her property from her parents, who purchased it in 1922, when she was about 20 years old. Presumably, at the time of the trial she had been acquainted with the neighborhood for 46 years. And if the urban renewal project had been a fraudulent conspiracy, she could certainly have found corroborating witnesses.

Both petitioner and the dissenting opinion are at odds with long settled law. As Judge Swygert himself stated in writing for a unanimous court in *Green Street Association* v. *Daley,* 373 F. 2d 1, at 6 (1967), cert. denied, 387 U.S. 932 (1967):

> "It is commonplace to recall that the power of eminent domain is an attribute of sovereignty. 'The taking of private property for public use upon just compensation is so often necessary for the proper performance of governmental functions that the power is deemed to be essential to the life of the state.' *State of Georgia* v. *City of Chattanooga,* 264 U.S. 472, 480 . . . (1924) . . . The power of eminent domain is legislative in character."

That statement is in accord with both Illinois and federal law. From the inception of the urban renewal programs, the Illinois Supreme Court has consistently and repeatedly held that the decision to condemn is a legislative decision. In *Zurn* v. *City of Chicago,* 389 Ill. 114, 59 N.E. 2d 18 (1945), it ruled that slum clearance accomplishes a public purpose (at 128, 129); that if the use is public, courts cannot inquire into the necessity of the condemnation, because that is a question for the legislature; and that notice to property owners of administrative hearings prior to the legislative action is not necessary (at 131). However, *Zurn* expressly held that the question whether the contemplated use is public is a judicial question.

These principles were later confirmed by the unanimous decision of this Court in the leading urban renewal case of *Berman* v. *Parker,* 348 U.S. 26, at 33 (1954), where it declared:

> "We do not sit to determine whether a particular housing project is or is not desirable . . . It is with-

in the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them."

In *People ex rel. Tuohy, State's Attorney* v. *City of Chicago,* 394 Ill. 477, 68 N.E. 2d 761 (1946), a quo warranto proceeding concerning a slum clearance bond issue approved by the electorate, the Illinois Supreme Court discussed the concept of public purpose in the light of settled condemnation law, particularly in the railroad cases, and held that it is not necessary in urban renewal that the rehabilitation be done by the city (at 487), since a private purpose may benefit the public (at 481).

In *Chicago Land Clearance Commission* v. *White,* 411 Ill. 310, 104 N.E. 2d 236 (1952), cert. denied 344 U.S. 824 (1952), which involved the Lake Meadows high-rise development in Chicago, the court upheld the taking as slum clearance, even though it was done pursuant to a prearranged deal with the New York Life Insurance Company to redevelop the land taken as a private housing project.

The expenditure of public funds to acquire vacant land for resale to private developers for non-low-rent housing, was held a public purpose in *People ex rel. Gutknecht, State's Attorney* v. *City of Chicago,* 414 Ill. 600, 111 N.E. 2d 626 (1953). In an opinion written by Mr. Justice Walter V. Schaefer, the court again held that the declaration of blight is legislative (at 613), the decision to acquire is not a taking (at 616), the condemnation suit is the hearing (at 617), and an exchange of considerations between the city and a private developer is proper and legal (at 617).

A striking resemblance to the condemnation proceeding in the instant controversy is presented by *Chicago Land Clearance Commission* v. *Quinn Home Builders,* 11 Ill. 2d 111, 142 N.E. 2d 60 (1957), cert. denied, 355 U.S. 856 (1957). There, too, the city introduced certified copies of the resolution of the municipal urban renewal agency and of the ordinance approving it. The defendant filed a traverse, but presented no evidence. In an opinion also written by Mr. Justice Schaefer, it was held that the condemning authority had made out a *prima facie* case, and the unproven traverse was properly overruled.

An even closer duplicate of the *Blankner* condemnation is to be found in *City of Chicago* v. *R. Zwick Co., et al. (Guillermo Gonzales et al., appellants),* 27 Ill. 2d 128, 188 N.E. 2d 489 (1963), app. dism. 373 U.S. 542 (1963). This had to do with the Harrison-Halsted urban renewal project, designed to clear land for the Chicago Circle campus of the University of Illinois, pursuant to a prior deal between the university and the city. There the defendants also contended they had been denied due process in the administrative proceeding and that the official declaration that the area was slum and blighted was a "self-fulfilling prophecy" (at 130). Again, the court, relying upon *Berman* v. *Parker,* held that the hearings were legislative and that the agreement between the city and the university was proper and legal (at 132).

Still another urban renewal condemnation case similar to the one at bar is *City of Chicago* v. *Barnes,* 30 Ill. 2d 255, 195 N.E. 2d 620 (1964), which concerned an urban renewal project at 37th Street and Cottage Grove Avenue in Chicago. There, too, the city introduced certified copies of the administrative determination and the applicable ordinance; the defendants presented no evidence in

support of their traverse. They did convince the trial judge, who dismissed the condemnation proceeding. But he was reversed by the Illinois Supreme Court. Although it was admitted by the city that the property of the defendants was not slum and blighted (which is not conceded by the City in the instant case), the court held that the City had made out a prima facie case, which the defendants had failed to rebut.

Thus, it is clear that all the contentions of Miss Blankner have been repeatedly rejected by the Illinois Supreme Court and review of them has periodically been denied by this Court. There is no need for this Court to devote any more of its limited time to this petition for certiorari than is necessary to deny it.

IV.

THE COURT OF APPEALS WAS CORRECT IN RULING THAT PETITIONER IS NOT A PROPER PARTY TO MAINTAIN THIS LITIGATION AS A CLASS ACTION.

Petitioner brought this civil rights case as a class action on behalf of "all property owners" subject to having their property condemned under the Illinois Urban Renewal Consolidation Act (Ill. Rev. Stat. 1973, ch. 67½, pars. 91.101 *et seq.*; set forth in Petition, App. 93-98). The district court held that res judicata defeated plaintiff's claim and it could not be revived by class allegations (Petition, App. 18, 19).

The court of appeals affirmed the result of this ruling (Petition, App. 27) that, even assuming *arguendo* that plaintiff's membership in the class she purports to represent has not been terminated by the condemnation judgment, she is not a fair representative of the class, for

the reason that most members of the class have not already litigated a condemnation proceeding in the state courts, whereas petition has and the issue of res judicata and collateral estoppel that dominate this case are "unique to Miss Blankner."

Rule 23(a)(3) of the Federal Rules of Civil Procedure requires that the claims of the named plaintiffs be "typical of the claims . . . of the class." Where a major focus of the litigation is on a defense unique to the named plaintiff, as here, then the named plaintiff is not a proper representative. The named plaintiff should not be permitted to impose such a disadvantage on the class. *Koos* v. *First National Bank of Peoria,* 496 F. 2d 1162, at 1164, 1165 (7 Cir., 1974).

The opinion of the Fourth Circuit in *Moss* v. *Lane Company, Inc.,* 471 F. 2d 853 (4th Cir., 1973), cited by petitioner (p. 27), is not in conflict with this ruling of the Seventh Circuit. There the district court had "found that the plaintiff had met 'the four prerequisites for bringing a class action under Rule 23(a)'." (at 855). It was on the basis of that finding that the Fourth Circuit ruled, "If the plaintiff were a member of the class at the commencement and his competency as a representative of the class then determined or assumed, the subsequent dismissal or mootness of his individual claim, particularly in a discrimination case, will not operate as a dismissal or render moot the class, or destroy the plaintiff's right to litigate the issues on behalf of the class" (*id.*). In the instant matter Miss Blankner was not a member of the class at the commencement of the action and there has been no such determination that petitioner is a competent representative of the class. On the contrary, the district

court found Miss Blankner is not a proper representative of the class.

Nor is the Fifth Circuit in conflict with the Seventh on this issue. In *Martin* v. *Thompson Tractor Co.*, 486 F. 2d 510 (5 Cir., 1973), in which the plaintiff claimed he had been subjected to unlawful racial discrimination in employment, a finding against him on the merits was held not to defeat the class action. There the named plaintiff's claim was based on the solid legal ground of racial discrimination. Here the named plaintiff's claim is based on propositions of law that have been repeatedly disallowed by the Illinois Supreme Court in decisions which this Court has repeatedly declined to review.

The same observations apply to *Francis* v. *Allied Service Company of Texas, Inc.*, 486 F. 2d 597, at 598 (5 Cir., 1973) and *Huff* v. *N.D. Cass Company of Alabama*, 485 F. 2d 710, at 712 (5 Cir., 1973), cited in the Petition (p. 26). In *Huff* the case was remanded to determine whether the plaintiff, whose claim had been disposed of on the merits, otherwise satisfied the requirements of Rule 23. In the case at bar, the district court has already determined that Miss Blankner does not satisfy the requirements of Rule 23.

The Sixth Circuit decision cited by the petition (p. 27) in this connection—*Roberts* v. *Union Company*, 487 F. 2d 387 (6 Cir., 1973)—was based on sex discrimination in employment, and the company's defense was the affirmative one of bona fide occupational classification. The district court found on the merits that the plaintiff's lower wages were justified by her sales record and that she had left her employment voluntarily. It was held by the Sixth Circuit this finding did not justify dismissal of the class,

since the complaint alleged the defendant had a discriminatory hiring policy and the class was not limited to current female employees, but encompassed all females who might have been injured by the company's policies.

The class Miss Blankner is endeavoring to represent does not consist of persons with claims of racial or sex discrimination. It consists of persons she asserts might have been injured by a statute, the constitutionality of which has for many years been uniformly upheld. Nor is there any indication anyone else wants to join the class. The class action aspect of this case was properly disallowed.

V.

THE DENIAL OF A THREE-JUDGE DISTRICT COURT WAS CORRECT.

THE QUESTION IS NOW MOOT.

District Judge McLaren denied petitioner's application for the convening of a three-judge court pursuant to 28 U.S.C. §2281 (Petition, App. 1, 2). She had requested this on the ground that the action brought into question the validity under the United States Constitution of a state statute—to wit. The Illinois Urban Renewal Consolidation Act of 1961 (Ill. Rev. Stat. 1973, ch. 67½, §91.101 *et seq.*).

But that statute, by its terms, applies only to "urban communities within . . . [Illinois] with more than 500,000 inhabitants." The statute clearly applies only to the City of Chicago. Nor can it be expected in the reasonable future to apply to any other municipality.

Expressly recognizing that, because of the burden that the convening of a three-judge district court places upon the federal judiciary, this Court has frequently directed

that 28 U.S.C. §2281 is to be strictly construed, the district court ruled that where the challenge is to a statute that on its face seems of statewide application, but actually has only local impact, a three-judge court is not to be convened.

This determination is clearly in accord with this Court's holding in *Board of Regents* v. *New Left Education Project,* 404 U.S. 541 (1972). That case concerned an attack on rules of the Board of Regents of the University of Texas with regard to on-campus distribution of literature and solicitation of dues from members of political organizations. This Court held that because the rules at issue extended to only a fraction of the campuses in the state system of higher education and there was no showing they represented a statewide policy, the three-judge court had been improperly convened and this Court lacked jurisdiction on a direct appeal.

It is of interest that Mr. Justice Douglas, in dissenting in that case, stated (at 546):

> "But where a state law is not of 'statewide concern' and involves only 'legislation affecting a locality' (*Rorick* v. *Board of Commissioners,* 307 U.S. 208, 213 . . .), then the policy of 28 USC §2281 is deemed not served."

Likewise, in *Moody* v. *Flowers,* 387 U.S. 97 ((1967), this Court held that three-judge courts may not be convened to consider challenges to a state statute applying to a particular county.

In affirming the denial of a three-judge court in the instant matter, the court of appeals cited both these decisions of this Court (Petition, App. 28). The discussion of this issue in the petition for certiorari (App. 27-29) ig-

nores these applicable authorities, and instead cites *Williams* v. *Osser,* 326 F. Supp. 1139 (E.D. Pa., 1971), with which the Seventh Circuit stated it disagreed (Petition, App. 28).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied, or, in the alternative, the writ should be granted and the judgment of the court of appeals summarily affirmed.

Respectfully submitted,

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April 11, 1975

APPENDIX A

In The Supreme Court Of Illinois

(No. 41867.—Judgment affirmed.)

THE CITY OF CHICAGO, Appellee, v. ROBERT L. WALKER *et al.*—(Frederika Blankner, Appellant.)

Opinion filed November 24, 1971.—
Rehearing denied Jan. 14, 1972.

1. EMINENT DOMAIN—*when motion to dismiss condemnation petition is properly denied—urban renewal.* A property owner's traverse and motion to dismiss a city's petition to condemn property for urban renewal is properly denied where the resolution of the Department of Urban Renewal and the ordinance of the city made a *prima facie* case and the defendant property owner elected to offer no evidence. (p. 70)

2. SAME—*contemplated resale for private use does not bar condemnation of blighted area.* The taking of land for the redevelopment of slum and blighted areas is a taking for a public purpose, and the fact that a portion will be resold for development for private purposes does not render the condemnation invalid. (p. 71)

APPEAL from the Circuit Court of Cook County; the Hon. EDWARD J. EGAN, Judge, presiding.

THOMAS GRIPPANDO, of Chicago, for appellant.

RICHARD L. CURRY, Corporation Counsel, of Chicago, (WILLIAM R. QUINLAN, and DANIEL PASCALE, Assistants Corporation Counsel, of counsel,) for appellee.

DAVID S. KREISMAN, STUART DIAMOND and ROBERT STEVENS, all of Chicago, for *amici curiae.*

(Appendix A)

MR. JUSTICE GOLDENHERSH delivered the opinion of the court:

Defendant, Frederika Blankner, appeals from the judgment of the circuit court of Cook County entered upon a jury verdict in an action in eminent domain in which petitioner, City of Chicago, condemned a parcel of real estate owned by defendant.

The City of Chicago, under authority of the Urban Renewal Consolidation Act of 1961 (Ill.Rev.Stat. 1969, ch. 67½, pars. 91.101 *et seq.*) created the Department of Urban Renewal which on October 8, 1964, determined that a certain area adjacent to the campus of the University of Chicago was a slum and blighted area and should be acquired for redevelopment. The city council, by ordinance adopted on November 16, 1964, approved the Department's determination. The petition in this case was filed on April 1, 1968.

Defendant, the owner of a parcel of land situated in the area involved filed a "traverse and motion to dismiss" which in substance attacked the finding of the Department of Urban Renewal that the area was blighted, and charged that the property was being taken for a private and not a public purpose. In support of this latter contention defendant alleged that there was an agreement between the Department of Urban Renewal and the University of Chicago that upon acquisition of the property by the city it would be conveyed to the university, thus enabling the university to acquire, through exercise of the city's power of eminent domain, property which the university had no authority to condemn.

The circuit court denied the traverse and the case was set for trial resulting in the verdict and entry of the judgment from which this appeal is taken.

As grounds for reversal defendant contends that the trial court erred in denying her traverse. She argues that

she was denied an opportunity to introduce evidence to prove that the area generally, and her property specifically, were not blighted. She contends further that the circuit court's ruling that proof of the resolution and ordinance declaring the area blighted and authorizing its acquisition made a *prima facie* case erroneously shifted to her the burden of proof that the area was not slum and blighted, thus denying her due process and equal protection rights guaranteed under the fourteenth amendment to the constitution of the United States.

The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a *prima facie* case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case (*City of Chicago* v. *Barnes*, 30 Ill.2d 255; *Chicago Land Clearance Com.* v. *Quinn Home Builders*, 11 Ill.2d 111), and the trial court did not err in denying the traverse and motion.

Defendant contends further that the court erred in denying her motion to dismiss for the reason that the petition contains conclusions of law and does not plead the ultimate facts requisite to state a cause of action in eminent domain. An examination of the petition shows it to be sufficient and the motion to dismiss was properly denied.

We have considered the arguments of defendant and of *amici curiae* that acquisition of the defendant's property through condemnation for resale to the university denies to this defendant the equal protection of the law. We have previously held that the taking of land for the redevelopment of slum and blighted areas is a taking for a public purpose, and the fact that a portion will be resold for development for private purposes does not render the condemnation invalid. (*Chicago Land Clearance Com.* v. *White*, 411 Ill. 310.) We do not discuss the remaining con-

tentions of *amici curiae* for the reason that insofar as they are relevant to issues presented by the record they have been determined by our holding in *City of Chicago* v. *Zwick Co.*, 27 Ill.2d 128.

Finally, defendant contends that the circuit court erred in denying her request that the trial to determine just compensation be continued for an indefinite period or in the alternative for 90 days. The record shows that the court continued the case for 14 days and that this was adequate for the protection of defendant's rights.

For the reasons stated herein the judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

APPENDIX B

MUNICIPAL CODE OF CHICAGO, ILLINOIS:

Chapter 15: Department of Urban Renewal.

"*15-1.* It is determined that there is a need to consolidate the functions of the Chicago Land Clearance Commission and of the Chicago Community Conservation Board in a single body and provide for the creation of a Department of Urban Renewal under the 'Urban Renewal Consolidation Act of 1961.'

"*15-2.* A 'Department of Urban Renewal' is hereby created, which shall exercise all of the powers contained in the 'Urban Renewal Consolidation Act of 1961.' It shall be governed by a Board consisting of five Members who shall be appointed by the Mayor and approved by the City Council . . .

"*15-3.* The Department shall adopt rules and regulations applicable to the administration of the Department.

"*15-5.* The Department of Urban Renewal of the City of Chicago, as agent of the City, shall have and exercise the following powers with respect to redevelopment projects:

(a) to acquire slum and blighted areas which may constitute a redevelopment project;

(b) to clear any area so acquired by demolition or removal of existing buildings and structures thereon; and to install, repair, construct or reconstruct streets, utilities and site improvements essential to the preparation of sites for use in accordance with a redevelopment plan;

(c) to convey real property so acquired for use in accordance with a redevelopment plan;

(d) to accomplish a combination of the foregoing to carry out a redevelopment plan.

(Appendix B)

"In relation to the foregoing powers the Department may investigate into living and housing conditions in its area of operation to determine the extent and location of slum and blighted areas and other areas which may constitute a redevelopment project and to ascertain in which of such area or areas development or redevelopment should be undertaken, and in connection with any such investigation may conduct public hearings, take testimony and proof under oath on the subject matter of such investigation, and cooperate with the Commissioner of Planning and the Chicago Plan Commission.

"The Department shall have power to make studies, surveys and plans preliminary to or concerning any projects which are permissible under law . . ."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1046

FREDERIKA BLANKNER,

Petitioner,

vs.

THE CITY OF CHICAGO A MUNICIPAL CORPORATION, ET AL.,

Respondents.

REPLY BRIEF OF PETITIONER.

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REPLY BRIEF OF PETITIONER.

May it Please the Court:

I.

The City of Chicago Respondents' supplemental statement of facts (City Resp. Br. pp. 3-19) flagrantly misstates facts and ignores the posture of this case. Much of the statement goes outside the allegations of the complaint and outside any record in these proceedings. Petitioner urges this Court to adhere to the record submitted with the Petition for Certiorari so that effective justice may be done. Particularly, petitioner urges this Court to read paragraphs 10 and 11 of the complaint (Pet. App. pp. 38-45). Paragraph 11 lists 16 buildings *owned* by the University, falsely designated as requiring clearance but still standing and in use as of the filing of the complaint herein; and, still standing and in use by the University today—April, 1975.

At no juncture in these proceedings did respondents submit any evidence (including the record of the prior state court con-

demnation proceedings). The City of Chicago Respondents' statements relating to the condition of the Urban Renewal Area (City Resp. Br. pp. 4-5); the improbability that there was no notice or hearing at the time the slum and blight determinations were made (City Resp. Br. pp. 7-8); the conduct at the state court condemnation proceedings (City Resp. Br. pp. 9-13); the status quo of petitioner's building, her rental income, her real estate tax immunity, the City's expenses, and the urban renewal plan (City Resp. Br. pp. 13, 14, and 19) are *all* matters dehors the record, as are the arguments based on such improper assertions and statements.

II.

Petitioner urges that the prior state court condemnation proceedings, which she alleges denied her both procedural and substantive due process, cannot by res judicata either bar her Section 1983 claim or her challenge to the constitutionality of the Illinois Urban Renewal Consolidation Act of 1961 (Pet. pp. 13-22). Respondents skirt the issue; they do not suggest that the state court proceedings afforded petitioner an opportunity to be heard consistent with due process. The underlying policies of Section 1983—that of protecting federal rights from unconstitutional state action—militates against according estoppel effect to that judgment. Due process outlaws it.

Respondents contend that the decision of the court below does not conflict with *Lombard* v. *Board of Education of the City of New York*, 502 F. 2d 631 (2d Cir. 1974), claiming that the due process questions raised in *Lombard* were not previously

NOTE: "Pet." refers to Petitioner's petition for a writ of certiorari;

"City Resp. Br." refers to Brief in Opposition of the City of Chicago Respondents;

"University Resp. Br." refers to Brief in Opposition on Behalf of the University of Chicago, et al.;

"Commission Resp. Br." refers to Brief of Respondents Southeast Chicago Commission, et al.;

"Federal Resp. Br." refers to Memorandum for the Federal Respondents in Opposition.

decided in the state court proceedings (City Resp. Br. pp. 23-27; Commission Resp. Br. pp. 4-5). The Second Circuit's dictum to that effect does not square that decision with that of the court below. In reviewing the state court condemnation judgment, the Illinois Supreme Court summarized and decided petitioner's due process argument as follows, *City of Chicago* v. *Walker*, 50 Ill. 2d 69, 70-71 (1971) *cert. denied sub nom. Blankner* v. *Chicago*, 408 U. S. 931:

> "As grounds for reversal defendant contends that the trial court erred in denying her traverse. She argues that she was denied an opportunity to introduce evidence to prove that the area generally, and her property specifically, were not blighted. She contends further that the circuit court's ruling that proof of the resolution and ordinance declaring the area blighted and authorizing its acquisition made a *prima facie* case *erroneously shifted to her the burden of proof* that the area was not slum and blighted, *thus denying her due process* and equal protection rights guaranteed under the fourteenth amendment to the constitution of the United States.
>
> "The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a prima facie case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case (City of Chicago v. Barnes, 30 Ill. 2d 255; Chicago Land Clearance Com. v. Quinn Home Builders, 11 Ill. 2d 111), and *the trial court did not err* in denying the traverse and motion." (Emphasis ours.)

The due process questions petitioner raises here were no more decided by the state court than they were in *Lombard*, which was recently reaffirmed by *Newman* v. *Board of Ed. of City Sch. Dist. of N. Y.*, 508 F. 2d 277 (2d Cir. 1975).

Nothing in respondents' briefs suggests that the decision of the court below does not conflict with *Mack* v. *Florida State Board of Dentistry*, 430 F. 2d 862 (5th Cir. 1970) *cert.*

denied 401 U. S. 960. The Fifth Circuit in *Mack* did not consider it necessary to determine the precise issues decided in prior state court proceedings. It examined the *nature* of the prior proceedings—whether they afforded an opportunity to be heard consistent with due process—in deciding whether to accord them preclusion effect.

III.

Respondents suggest that the issues petitioner raises here are the same as those previously presented in a petition for certiorari taken from the judgment of the Illinois Supreme Court (City Resp. Br. p. 3; University Resp. Br. pp. 1-5; Commission Resp. Br. pp. 6-7). The very nature of the issues raised here—relating to the res judicata effect of prior state court proceedings in a Section 1983 claim, the right to a federal forum to litigate constitutional challenges to urban renewal, the requirements of Rule 23 of the Federal Rules of Civil Procedure, and the meaning of the term "state statute" in 28 U. S. C. § 2281—belies the contention.

Nothing in respondents' briefs answers petitioner's arguments that:

(i) the holding of the court below forecloses federal review of state urban renewal procedures even though violations of federally guaranteed rights are claimed under Section 1983 (Pet. pp. 22-24); City of Chicago Respondents admit as much (City Resp. Br. p. 27);

(ii) the court below erred in holding that an essential element of petitioner's Section 1983 claim was that the urban renewal area was not slum and blighted and in effect condones the violation of civil rights to achieve an end which could have been achieved by lawful means (Pet. pp. 24-25).

IV.

The order of the Court of Appeals denying petitioner's petition for rehearing was entered on November 21, 1974. The 90-day period provided by 28 U. S. C. § 2101(c) expired on February 19, 1975; and, the petition was filed on February 20, 1975.

Petitioner's petition was printed in time to file within the period allowed and petitioner had, in good faith, made arrangements for the filing of the petition within the 90-day period. The filing of the petition one day late was due to circumstances beyond her control.

Upon learning that the petition was filed one day late, counsel for petitioner filed a motion to extend the time by one day within which to file the petition. Affidavits of petitioner's counsel and the printer and a letter from the air freight delivery service were attached.

The Federal respondents (Fed. Resp. Br. p. 1) contend that the late filing deprives this court of jurisdiction of this matter. 28 U. S. C. § 2101(c) permits the time within which to file a petition for a writ of certiorari to be extended up to sixty days. Petitioner's petition was filed well within that time. Petitioner seeks that the requirement of Rule 34(2) of the Rules of the Supreme Court, namely, that a motion to extend the time to file a petition be filed within the period sought to be extended, be waived in this case. This court has previously held that its Rules are not jurisdictional, *Schacht* v. *United States*, 398 U. S. 58, 63-65.

Petitioner respectfully submits that the late filing of her petition for a writ of certiorari does not deprive this Court of jurisdiction over this matter.

CONCLUSION.

Petitioner respectfully requests that the Petition for Writ of Certiorari be granted for the reasons stated therein.

Respectfully submitted,

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